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Supreme Court of the United States

OCTOBER TERM, 1906

No. ~~642~~ 27

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JAMES V. GILES, ET AL. PETITIONERS.

MARYLAND.

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AS WIT IN TESTIMONY TO THE COURT OF APPEALS  
OF THE STATE OF MARYLAND



# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 642

JAMES V. GILES, ET AL., PETITIONERS

MARYLAND

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS  
OF THE STATE OF MARYLAND

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United States and Article 23 of the Bill of Rights of the Maryland Constitution in that (a) petitioners' convictions were procured by testimony which was perjured, which the State knew was perjured, and some of which perjured testimony the State induced; (b) the State suppressed and withheld material exoneratory evidence and thereby was enabled to, and did, give at the trial a false and misleading interpretation of the facts; and (c) petitioners have been denied a reasonable opportunity to obtain a new trial on the basis of material exoneratory evidence which was discovered after their convictions and was not available to them at the trial.

4. The relief sought by petitioners is the setting aside of their convictions and their release from custody, either absolutely or conditional on their being accorded a new trial.



[fol 8]  
**IN CIRCUIT COURT OF MONTGOMERY COUNTY**

**PETITION PURSUANT TO POST CONVICTION PROCEDURE**

**Act—Filed May 11, 1964**

James V. Giles and John G. Giles, petitioning under the Post Conviction Act, Md. Code Ann., Art. 27 Sec. 654A, respectfully represent:

1. Petitioners are confined in the Maryland State Penitentiary at Baltimore, Maryland.

2. A verdict of guilty of rape was returned against each petitioner in the Circuit Court for Montgomery County, Maryland, on December 5, 1961. Judgments on the verdicts were entered against them on December 11, 1961, in said Court, and petitioners were sentenced to death. The sentences were commuted to life imprisonment by the Governor of Maryland on October 24, 1963.

3. The grounds upon which this Petition is based are that petitioners are imprisoned in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States and Article 23 of the Bill of Rights of the Maryland Constitution, in that (a) petitioners' convictions were procured by testimony which was perjured, which the State knew was perjured, and some of which perjured testimony the State induced; (b) the State suppressed and withheld material exculpatory evidence and thereby was enabled to, and did, give at the trial a false and misleading impression of the facts; and (c) petitioners have been denied a reasonable opportunity to obtain a new trial on the basis of material exculpatory evidence which was discovered after their convictions and was not available to them at the trial.

4. The relief sought by petitioners is the setting aside of their convictions and their release from custody, either absolutely or conditional on their being accorded a new trial.



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[fol. 9] 5. Previous proceedings relating to this case were as follows: **IN CIRCUIT COURT OF MONTGOMERY**

(a) Petitioners, having been indicted for rape in the Circuit Court for Montgomery County, were tried before a jury in said Court, Honorable James H. Pugh presiding, on December 4 and 5, 1961 (No. 4590 Criminals), and were sentenced to death on December 11, 1961. At the trial petitioners were, because of their indigency, represented by court-assigned counsel.

(b) Petitioners appealed their convictions to the Court of Appeals of Maryland upon the following grounds: (1) The evidence was not legally sufficient to sustain the convictions; (2) Petitioners were denied a fair and impartial trial because there were no Negroes on their jury; (3) The trial judge should have asked the jurors on voir dire, "Have any of you any bias or prejudice against a defendant who is Negro when the complaining witness is a white woman;" (4) Petitioners were denied due process of law when the jury exercised the power given them by the Maryland Constitution to determine all the relevant legal principles as well as the facts of the case; (5) Petitioners were denied due process and equal protection by the failure of the trial judge to give the jury advisory instructions on any of the relevant legal principles; (6) The trial court improperly limited petitioners' counsel in cross-examination and impeachment; and (7) The sentence was excessive.

(c) The Court of Appeals affirmed the convictions in an opinion filed July 18, 1962. *Giles v. State*, 229 Md. 370, 183 A. 2d 559. A Motion for Reargument was filed August 12, 1962, urging reconsideration of the sufficiency of the evidence, and requesting the court to decide whether advisory instructions are required in a capital case when not requested of the trial judge. The Motion was denied on September 19, 1962.

(d) Petitioners then appealed to the Supreme Court of the United States upon the grounds set forth as 5(b)(4).

and 5(b)(5) above. On April 22, 1963, the Supreme Court dismissed the appeal for want of a substantial federal question. 372 U.S. 767.

[fol. 10] (e) On November 16, 1962, petitioners filed in this Court a motion for a new trial based upon newly-discovered evidence. The motion was denied on November 20, 1962, upon the ground that Rule 567 of the Maryland Rules required such a motion to have been filed within three days after verdict. This denial was appealed to the Court of Appeals, which affirmed the action of this Court on May 6, 1963. *Giles v. State*, 231 Md. 387, 190 A. 2d 627.

(f) On October 24, 1963, Governor J. Millard Tawes commuted petitioners' sentences to life imprisonment.

6. At the trial, the principal witnesses against petitioners were the alleged victim (hereafter referred to as the prosecutrix) and her escort, Stewart Foster. They testified, in substance, that while they were sitting in a parked car on the night of July 20, 1961, the petitioners and another individual (Joseph E. Johnson, Jr.) approached the car, demanded Foster's money and the girl, and attacked Foster. They denied that Foster had cursed and used racial epithets toward petitioners and Johnson prior to the altercation. The prosecutrix testified that she ran into the woods nearby; that thereafter the petitioners and Johnson had sexual intercourse with her, to which she submitted out of fear; and that she had not told petitioners that she was on probation or that she had had intercourse with sixteen other boys that week and they would make it an even twenty. Petitioners testified at the trial, in substance, that they and Johnson had peaceably approached the car; that they had not demanded the girl; that Foster provoked the altercation by cursing them and using racial epithets against them; that the prosecutrix had consented to having, and had invited petitioners to have, sexual intercourse; that she had told them that she was on probation or in trouble; that if caught in the woods she would have to claim that she was raped, and that she had had intercourse with 16 or 17 other



boys that week and two or three more wouldn't make any difference. Petitioner John Giles testified that he had not had sexual intercourse with the prosecutrix.

The allegations of paragraphs 7, 8 and 9 hereof are stated on information and belief.

[Vol 11] 7. The State instigated said Stewart Foster to testify falsely at the trial that he had not cursed petitioners and Johnson.

8. The following material testimony given at the trial was false and known to be false by the State:

(a) Testimony by Stewart Foster that he did not "cuss out" petitioners and Johnson or call them "black mother fuckers," and that he and a companion, George Trent, had their bathing suits in the car.

(b) Testimony by the prosecutrix that Foster had not used profanity to the petitioners and Johnson.

(c) Testimony by Stanley Harding, a police officer, that the prosecutrix had not told him that only two boys had attacked her and that he had never talked to petitioners' mother and father.

9. At the time of the trial, the State was in possession of information and evidence, not then known to petitioners or their counsel, which materially corroborated the testimony of petitioners, materially discredited the testimony of the prosecutrix, and materially impeached her credibility. The State suppressed and withheld this information and evidence. Thereby it was enabled to, and did, create a false and misleading impression of the true facts and impugn petitioners' testimony. The facts, circumstances and evidence so withheld and suppressed included the following:

(a) At the time of the alleged rape, there was pending against the prosecutrix in the Juvenile Court for Prince George's County, Maryland, charges that she was a delinquent child, beyond the control of her parents, and kept



late hours. The State Department of Parole and Probation had recommended that the prosecutrix be placed on probation. The evidence of these circumstances in the possession of the State included the charges and a report of the Maryland Department of Parole and Probation. These documents are part of the records of the Juvenile Court for Prince George's County, Maryland, are not obtainable [fol. 12] by petitioners except by judicial process, and therefore cannot be attached hereto.

(b) About five weeks after her alleged rape by petitioners, the prosecutrix made irresponsible and unfounded charges that she had been raped on another occasion by other men.

(c) Prosecutrix was sexually promiscuous, habitually engaged in sexual intercourse with many men, including persons not known to her, and had frequently participated in oral sodomy.

Evidence and information of (b) and (c) in the possession of the State included a report of the Hyattsville City Police and an investigation report of Detective L. R. Wheeler of the Prince George's County Police. The originals of these reports are not obtainable by petitioners except by judicial process and therefore cannot be attached hereto. There is, however, included in the Appendix hereto a true and authentic copy of said reports.

(d) At the time of both the alleged rape and the trial, the prosecutrix was mentally and emotionally ill and unstable. A psychiatrist and her family physician had diagnosed her as a juvenile schizophrenic in need of psychiatric care. On September 3, 1961, a hearing was held in the Juvenile Court of Montgomery County, Maryland (Case No. 1606-61), on allegations that the prosecutrix was out of parental control and living in circumstances endangering her well-being and a necessary witness for the State in the criminal case pending against petitioners. Detective Lieutenant Lloyd M. Whelan, of the Montgomery County police department, who was in charge of the investigation and proper.

James V. Giles, John G. Giles, Petitioners.

of the alleged rape of the prosecutrix, participated in this hearing. The Juvenile Court committed the prosecutrix to the Montrose School for Delinquent Girls. Information and evidence as to these matters appears, in part, in the records referred to in 9(a) hereof and in the records of the aforesaid proceeding in the Juvenile Court of Montgomery County. Such records are not obtainable [for 13] by petitioners except by judicial process and therefore cannot be attached hereto.

10. More than three days after verdict, petitioners discovered evidence and information, not available to them at the trial, of material matters which were exculpatory of petitioners and tended to corroborate their testimony and to discredit the testimony of the prosecutrix and Stewart Foster. The evidence of these matters, if introduced at the trial, would in all likelihood have resulted in an acquittal of petitioners. These matters included the following:

(a) The matters referred to in paragraphs 8 and 9 hereof.

(b) That on the day after the alleged rape, Stewart Foster had given an account of the episode which was inconsistent with his testimony and consistent with the testimony of petitioners.

(c) That soon after the alleged rape, the prosecutrix made statements which indicated an insouciant attitude toward the alleged rape and tended to show that she had not been raped.

(d) That the prosecutrix was sexually promiscuous to an extraordinary degree and manifested symptoms of nymphomania.

(e) That the prosecutrix was mentally ill and unstable.

(f) That Stewart Foster was a habitual brawler and a habitual user of profanity and vile language, especially toward Negroes, and including the epithet "mother fuckers," which petitioners testified he had addressed to them prior to the altercation.



11. Because of the unreasonable time limitation of the Maryland Rules, which provide that a motion for a new trial based on after-discovered evidence must be filed within three days after verdict, petitioners are being unconstitutionally denied a fair and reasonable opportunity to obtain a new trial on the basis of the after-discovered evidence which shows that petitioners' convictions were unjust and that they are innocent of the crime of which they were convicted.

[fol. 14] 12. The evidence of the matters referred to above includes, but is not limited to, documentary material in addition to the transcript of petitioners' trial. Such of the said documentary material as is available to petitioners is attached hereto as an Appendix, consisting of affidavits of John Patrick Stephens, Barbara Yoke, Raymond J. Dean, Jesse Dorrough, Stephen Brooks, Edward Wilson, John H. Giles, Mary L. F. Giles, and Jacqueline Giles; a copy of affidavit of Barbara Yoke filed in this Court in support of the new trial motion referred to in 5(e) hereof; a true excerpt from the transcript of testimony of police officer John T. Kennedy, given on September 25, 1962, at the trial in the Circuit Court for Anne Arundel County, Maryland, Criminal No. 6134, of Joseph E. Johnson, Jr., who was petitioners' companion at the time of the alleged rape and was likewise convicted of rape; a signed statement of George Trent; a photostatic copy of the Wheeler report, referred to in paragraph 9(b) hereof. Petitioners hereby verify that these documents are authentic and are what they purport to be.

Wherefore, petitioners pray:

1. That the verdicts, judgments and sentences entered against them be vacated.
2. That the Court order that petitioners be released from confinement absolutely or, in the alternative, that it order their release unless they are accorded a new trial within a stated, reasonable period of time.
3. And for such other and further relief as may be just and proper.

James V. Giles, John G. Giles, Petitioners.



[fol 15] **Duly sworn to by James V. Giles and John G. Giles, jurat omitted in printing.**

**APPENDIX TO PETITION PURSUANT TO POST CONVICTION  
PROCEDURE ACT**

**Contents**

1. Affidavit of John P. Stephens.
2. Copy of Affidavit of Barbara Yoke, dated October 13, 1962.
3. Affidavit of Barbara Yoke, dated June 5, 1963.
4. Affidavit of Raymond J. Dean.
5. Affidavit of Jesse Dorrough.
6. Affidavit of Stephen Brooks.
7. Affidavit of Edward Wilson.
8. Affidavit of John H. Giles.
9. Affidavit of Mary Giles.
10. Affidavit of Jacqueline Giles.
11. Excerpt of testimony of detective John T. Kennedy.
12. Statement of George Trent.
13. Hyattsville City Police Officer's Report.
14. Report of investigation of Detective L. B. Wheeler.

**[fol 16] Affidavit of John P. Stephens**

John P. Stephens, being duly sworn, deposes and says:  
1. My name is John Patrick Stephens. I am 22 years of age. I am a Private in the United States Army, serial number RA13819182, and currently assigned to Co B, 5th BN, 1st TNG BDE, Fort Jackson, South Carolina. I grew up at the home of my parents on Gorman Road, in Laurel,

James V. Giles, John G. Giles, Petitioners

Maryland. During the 1960-1961 and 1961-1962 school years I attended Northwestern Senior High School in Hyattsville, Maryland. While attending Northwestern I lived with my cousins, Mr. & Mrs. Robert L. Stephens, 3403 Rosemary Lane, Hyattsville, Md.

2. I know both Stewart Foster and Joyce Roberts, the principal witnesses for the State in *State v. Giles* and *State v. Johnson*. Stewart is an old friend from Laurel whom I have known since we were both small boys. Joyce Roberts was a student at Northwestern at the same time I was, and I knew many of the boys and girls from both Laurel and Hyattsville whom she also knew. I also know her reputation in both Hyattsville and Laurel.

3. I am familiar with the reputation of Stewart Foster for belligerence and fighting. But Stewart has a good side too. It always seemed to me that he felt inferior and at odds with the world, and that once he got started making wrong judgments, it was hard for him to change. Stewart is now married and living in New Jersey. The last time I saw him, in February 1963, he was trying to live decently. Around Christmas time, 1964, I saw Stewart's mother, and she told me he has a new baby boy.

4. Joyce Roberts' reputation for chastity in Laurel and in Hyattsville is extremely bad. Stewart Foster, Jesse Dorrough, Stephen Brooks, George Trent, Ralph Bennie, myself, and many other boys in Laurel and Hyattsville had sexual relations with her on many occasions. Joyce liked to be the only girl to go out with a group of boys, and to have intercourse with the whole group. I was with Jesse Dorrough one time when he and I and Stewart had sexual [fol. 17] relations with Joyce while parked in the gravel pit across from Stewart's house on Sandy Spring Road. On that occasion Joyce also had sexual relations with Stewart's younger brother. He was younger than Joyce. He had come over to see what was going on, and she invited him to get in the car.



5. Joyce preferred that we not use rubber contraceptives when we had relations with her. She said she couldn't get pregnant.

6. Joyce was very forward with boys. She would get into cars with people she didn't know. She drank with us. Sometimes over at the Mighty Mo Restaurant on Queens Chapel Road in Hyattsville she would offer to have sexual relations with any boy who would pay her \$5.00.

7. Joyce liked to boast about her sex accomplishments. I don't think she exaggerated. The last time I had sexual relations with her was in the back yard of my home. That was a few days, I think about four days, before she said she was raped by the Negroes. Stewart Foster told me that Joyce told him that she had had sexual relations with 15 boys in the last week. This was before she said she was raped by the Negroes that she told Stewart and he told me.

8. On several occasions I spoke with Stewart Foster about what happened the night of July 20-21, 1961, when he and George Trent and Bill Fellers took Joyce over to Rocky Gorge down Batson Road in Spencerville. Stewart told me that they had gone there for a nudist swimming party and a "gang bang". He told me he did curse the Negroes and call them "motherfuckers", and that the fight started because they asked for a cigarette and because they wanted Joyce. He told me he had some money with him, about \$15.00 as I recall, which he put in his shoe when he saw the Negroes coming. He said that the police told him to say that he didn't swear at the Negroes, and that later before the trial the State's Attorney told him to say that, and told him how to answer many of the questions he would be asked. He also told me that the plain [fel. 18] clothes officials who who took him to court—it may have been the state's attorney or police—told him to play the girl up. When I asked him if he didn't believe that Joyce had willingly had sexual relations with the Negroes, he

1st TNO RDE, Fort Jackson, South Carolina. I grew up at the home of my parents on Gorman Road, in Laurel.

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said, "Fuck that goddamn nigger, I don't care, I hope they hang him." Stewart usually won all the fights he got in, and I think his pride was hurt that he didn't win the fight that night.

John Patrick Stephens.

✓ Subscribed and sworn to before me this 28th day of March, 1964.

Isabell E. Thomas, Notary Public.

My commission expires May 3, 1965.

**AFFIDAVIT OF BARBARA YOKE—October 13, 1962**

City of District of Columbia, ss.:

Barbara Yoke, being duly sworn, deposes and says:

1. I am seventeen years of age, and reside at 221 Rita Drive, Odenton, Maryland.
2. I am personally acquainted with Stewart Foster, of Olney, Md.
3. On July 21, 1961, the day following the attack upon Stewart Foster, accompanied at the time by Joyce Carol Roberts, on Batson Road, in Spencerville, Maryland, I was in the home of Stewart Foster and his parents.
4. At that time, Stewart Foster related to me and to two members of his family what had occurred on the night of July 20, 1961.
5. The following is an account of what Stewart Foster said had occurred. He and Joyce were parked on Batson Road, and some guys came up the road. Stewart had some [fol. 19] money on him, which he hid in his shoe when he saw them coming. They asked him for a cigarette, and he told them to "Get out of here." They left, and returned after several minutes, asking for thirty cents to buy a pack



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of cigarettes. He then told them "Get the hell out of here, you niggers." Thereupon a fight started.

Stewart Foster has expressed to me familiarity with the reputation for chastity of Joyea Carol Roberts, and he stated that he knew it to be bad.

Barbara Yoke.

Subscribed and sworn to before me this 13th day of October, 1962.

Philip D'Andrea, Notary Public.

(Seal)

My Commission expires May 31, 1965.

**AFFIDAVIT OF BARBARA YOKES OF JUNE 5, 1963**

State of Maryland, County of Anne Arundel, ss:

Barbara Yoke, being first duly sworn, deposes and says:

1. I am eighteen years of age, and reside at 221 Rita Drive, Odenton, Maryland.

2. I am personally acquainted with Stewart Foster, of Olney and Laurel, Maryland, who was a principal witness for the prosecution in the cases of *State v. Giles* and *State v. Johnson*.

3. I used to date Stewart Foster's brother, Billy, regularly for about a year.

4. Stewart used to work at the race track in Laurel, Maryland.

5. Stewart was quick-tempered, frequently in fights, occasionally carried a knife, and was extremely loud-mouthed, particularly after drinking. He cursed and used profanity profusely.

6. Stewart on one occasion got into a fight with Homer Willis, of Barbersville, Md. During the fight, Stewart

clawed Homer's face with a beer-can opener, so that Homer was in danger of losing an eye.

7. Stewart was very prejudiced against colored people and I have heard him use the expressions "black mother-fucker" and "nigger."

8. Stewart had a low opinion of the character for chastity of Joyce Carol Roberts, and I have heard him say, "I think I'll go over to see Joyce tonight and get a piece," and "I'm going over to see the whore from Hyattsville," referring to Joyce.

9. Stewart lived for several weeks in Laurel, Md., with a girl who had run away from home, and whom he later turned in to the police after he got tired of her.

Barbara Yoke.

Subscribed and sworn to before me this 5th day of June, 1963.

Wm. H. Tipton, Notary Public in and for the State of Maryland, A. A. Co. My commission expires May 3, '65.

**AFFIDAVIT OF RAYMOND J. DEAN**

October 14, 1963.

To Whom It May Concern:

My name is Raymond J. Dean, and I live at 4308 Farragut Street, Hyattsville, Maryland, and I own and operate the Charcoal Grill at 5616 Baltimore Avenue in Hyattsville.

In July, 1961, my restaurant was called "Ray's Pizzas and Sandwich Shop" and it catered primarily to teen-agers. Prior to July, 1961, I had known Joyce Roberts for several months, as she frequently came into my restaurant. She [fol. 21] usually came in to be picked up by boys, and when this happened, she would leave my place with them. On some occasions, she was unruly and I would order her to leave and stay out for a week.



In July, 1961, I read in the papers that a girl had been raped by three Negroes and I learned from teen-age customers that this girl was Joyce Roberts. Within a week after I read about this, Joyce Roberts came into my restaurant again. I asked her a question about the alleged rape. (I do not recall my exact words, but it was a general question such as "What happened the other night, Joyce?") Joyce Roberts answered that one or two more did not make that much difference to her. This statement was made by her in a flippant manner, which was her usual manner of speech.

Shortly after this, I permanently barred Joyce Roberts and some other rough teen-agers from my restaurant because they were constantly creating trouble.

Raymond J. Dean.

Subscribed and sworn to before me this 14th day of October, 1963.

Lewis E. Weaver, Notary Public.

#### AFFIDAVIT OF JESSE DOROUGH

State of Maryland, Prince George's County, ss:

Jesse Dorough, being first duly sworn, deposes and says:

1. My name is Jesse Edmund Dorough. I am 20 years of age and reside at Route 2, Box 229A, Laurel, Maryland.

2. I have been employed as a barber at Bart's Barber-shop, in the Laurel Shopping Center.

3. I am personally acquainted with Stewart Foster and Joyce Roberts, who were the principal witnesses for the State in the cases of *State v. Giles* and *State v. Johnson*.

[Hol 22] 4. I had known Joyce Roberts for about a year before her alleged rape by the Giles brothers and Joseph Johnson in Spencerville, Maryland on the night of July 20, 1961.

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5. Joyce Roberts had a nice personality. She was friendly to you. She wouldn't say something to hurt your feelings unless she got mad at you. She could sing very well. She sang rock and roll songs and folk songs. But she always wanted to have sexual relations, and never seemed to be satisfied no matter how many of us boys she had relations with.

6. I have known Stewart Foster since I was a small boy.

7. I can't say anything good about Stewart Foster. He was just plain rotten. No one could trust him. Stewart liked to consider himself a tough guy, and always ready to fight. He habitually called people such names as "son-of-a-bitch", "whore-hopping-bitch", "motherfucker", and "cock-sucker." He would say these things to provoke them. He would say them in front of a fellow and his girl to try to start a fight to show his girl how tough he was. I have heard him say these things in front of Joyce Roberts. Stewart hated niggers. I've heard him brag about beating up niggers in Baltimore. Stewart used to nag at niggers and do things to provoke them.

8. The young men in our crowd who associated with Joyce Roberts knew her reputation for liking sex. I introduced Joyce to Stewart and personally told him that she would have sex with us anytime that we wished. The day I introduced Stewart to Joyce, three or four of us left the Laurel poolroom and went down to Joyce's house. We took her out in the car and all had repeated relations with her. That day we parked at the gravel pit across from Stewart's house on Sandy Spring Road and Stewart's next-to-youngest brother, about 13 then, came over to the car. Joyce asked him to get in the car and have some fun. Stewart said, "It's about time you were a man." He got in the car and had sex relations with Joyce. He looked sick afterwards.

[fol. 23] 9. The next day I went to see Joyce again and she told me that she didn't want any more to do with me,



that she was in love with Stewart Foster. I said, "Why, what can he do that I can't do?" She said, "He ate me." She asked me if I would engage in the same act with her that Stewart did and I said, "You're nuts."

10. I was with a bunch of boys at Joyce Roberts' house around the 4th of July, 1961 when a firecracker was put in the Roberts family mailbox. Joyce's parents were not home. It was late at night. Joyce came to the door and said she was in bed with her boy friend and didn't want to see me. The boy friend was standing in the darkened hall leading to the bedroom. Joyce said, "He has a gun and is going to shoot you." I could see the gun. After some argument, he put down the gun and we all left. I called up Joyce's mother when she returned and apologized and offered to pay for the mailbox. They had already bought a new mailbox, and I never did pay for the one that was destroyed.

11. As best I can recall, I had sex with Joyce about two times between the time her mailbox was blown up and the night she was supposed to have been raped.

12. The night following her alleged rape by the Giles brothers and Joseph Johnson, I drove to Hyattsville and met Joyce walking on the street near her house. She called me over and said, "I got raped last night by two niggers." I said, "I don't believe it." She said, "Sure I did." But it sounded funny the way she said it and how she talked about it. I couldn't tell if she was pleased by what happened, or just didn't care. She never gave any sign that it bothered her. Later on that same night I picked her up further down the street near the little store and drove her to Blue Pond in my car. We parked and had sexual relations. At that time she told me, "Niggers are good," and that they were bigger and better than white boys.

13. The first time I had relations with Joyce was about Christmas 1960. I had bought her a sweater for a present.

[fol. 24] I liked her and thought her a nice girl. She seemed pleased by the sweater, and said, "Now I've got a present for you, I'm going to let you have some." She took off her slacks and we had sex. She told me at that time that she couldn't get pregnant and didn't want me to use a rubber. She never wanted any of the boys to use a rubber when we went on gang barks. She assisted the boys she had relations with in every way. She would have sex with any of us in any way we could think of doing it. When she was finished with one boy, she would call out "next" for another one to begin. She seemed to enjoy arousing a boy, for example by first playing with his zipper, then kissing him all over.

14. Joyce once told me that she had an old man who paid her fifty dollars every time she went out with him, which was about once a week.

15. Joyce loved to drink Old Mr. Boston Shoe Gin and Pepsi Cola. She said it made a girl get hot.

16. One time before Joyce was involved with the Giles-Johnson case five of us boys took her to an apartment and stayed all night. We put on a phonograph record, and she did a strip tease show for us. After that we all had relations with her several times.

Jesse E. Darough.

Subscribed and sworn to before me this 27th day of December, 1963.

A. List Bates, Notary Public.

My commission expires 5/3/65.



## AFFIDAVIT OF STEPHEN BROOKS

State of Maryland, Prince Georges County, ss:

Stephen Brooks, being first duly sworn, deposes and says:

[Vol. 25] 1. My name is Stephen Frederic Brooks. I am 20 years of age (DOB March 18, 1943). I am a Private E1 in the United States Army stationed at Fort Jackson, S.C. My serial number is RA 13 811 948.

2. I am personally acquainted with Stewart Foster and Joyce Roberts who were the principal witnesses for the State in the case of *State v. Giles* and *State v. Johnson*.

3. I have known Stewart Foster for about 15 years. I grew up in Laurel, Md. and went to school with Stewart Foster.

4. I first met Joyce Roberts in May or June, 1961. I was introduced to her by Jesse Dorrough of Laurel. I first met her on a date with two other boys and one other girl. We drove to Fort Armistead, near Baltimore. I last saw Joyce Roberts in mid July, 1961.

5. Stewart Foster was no good at the time he was living in Laurel. He was always in fights. He usually started them. He was quick tempered. He was profane. He did not like colored people. He always tried to show people how tough he was. I have seen him slap a girl who was his date because she said something he didn't like, causing her to cry.

6. I have never known a girl that behaved anything like Joyce Roberts. She was forward about everything, particularly sex. For the few weeks that I knew her, she would have sexual relations with any boy any time he wanted to. On two occasions I saw her have sexual relations in an automobile with each of 3 or 4 boys. I had sexual relations with her two times, once in an automobile, and once in her house on Oglethorpe Street, in the first bedroom on the right hand side of the door as you go in her house. That

was before the fourth of July, 1961, when a group of us went to her house and her mailbox got blown up with a firecracker.

7. Several of us went to Joyce's house on the fourth of July, 1961, to see if she would come with us. We went up on the porch and knocked on the door. A boy, about 18 or 19, who we didn't know, came to the door. All he had [fol. 26] on was his trousers. No shoes, stockings, or shirt. He said, "she don't want to see you." We kept on knocking. Then Joyce came to the door and said she was with someone else and didn't want to have anything to do with us at that time. She said her parents were on a trip. Then the boy came back towards the door. He had a gun in his hand. He said for us to go away and threatened to shoot. Jesse Dorrough who was with us told the boy if he didn't put the gun down he'd take it away from him and beat him up with it. There was some arguing. The boy put the gun down. After that we went away.

8. The first time I had relations with Joyce I asked her if I should use a rubber. She said no, that she didn't have to worry about getting pregnant.

9. I have seen a picture of Joyce lying naked on a couch holding a beer can to her hand. I have seen her engage in oral sex acts with boys. She used to drink with us at her house and when she went with us in the car.

Stephen Frederic Brooks.

Subscribed and sworn to before me this 27th day of December, 1963.

Isabell E. Thomas, Notary Public.

My Commission expires May, 1965.



**AFFIDAVIT OF EDWARD WILSON**  
State of Maryland, Prince George's County, ss:

Edward Wilson, being first duly sworn, deposes and says:

1. My name is Edward Amos Wilson, Jr.

2. I am 27 years of age, and I reside at 419 Main Street, Laurel, Maryland.

3. I am self-employed as a radio and T.V. repairman.

4. I am personally acquainted with Stewart Foster, who was one of the principal witnesses for the State in the case of *State v. Giles* and *State v. Johnson*.

[fol 27] 5. I have known Stewart Foster for about five years.

6. Foster was extremely rowdy and always in fights. He made trouble everywhere. He drank a lot. He was a "nigger hater." He always carried a knife and has been known to knife and cut people in fights. He was known to be a dirty fighter and I have heard him say that he always fought to win. He was a foulmouthed person. He would call anyone a "bastard", or "cocksucker" or a "mother-fucker", and he did it hoping you would take offense so that he could get into a fight. He always thought that he was the "badest" fellow in this town.

Edward A. Wilson, Jr.

Subscribed and sworn to before me this 24th day of December, 1963.

Robert L. Stephens, Notary Public.

My commission expires May 2, 1965.

**AFFIDAVIT OF JOHN H. GILES**

John H. Giles, being first duly sworn, deposes and says:

1. My name is John Henry Giles. I am the father of John G. Giles and James V. Giles, the defendants in the case of *State v. Giles*.

2. I was present on the morning of July 21, 1961 at our home on Batson Road in Spencerville, Maryland, when Sgt. Harding of the Montgomery County Police said that the girl had said that only two boys had raped her the night before.

John H. Giles

Subscribed and sworn to before me this 28th day of Feb., 1964.

Nathaniel A. Miller, Notary Public.

My commission expires May 2, 1965.

[fol. 28]

**AFFIDAVIT OF MARY GILES**

Mary Giles, being first duly sworn, deposes and says:

1. My name is Mary Lucinda Frazier Giles. I am the mother of John G. Giles and James V. Giles, the defendants in the case of *State v. Giles*.

2. Several times on the morning of July 21, 1961, Montgomery County Police Officers stopped at our home on Batson Road in Spencerville, Maryland, in search of my sons John and James. One of the officers wanted to know if the boys had guns, and said if there were any trouble he would have to shoot them. I told the officer who said that not to shoot my own boy, right here on our own place, and that my heart couldn't stand it.

Md. Form No.



3. Sgt. Stanley ("Tack") Harding was there when the officer said he might have to shoot. I have known Sgt. Harding for many years, and asked him not to let them shoot my boys. I told him he knew we were a good family and not criminals.

4. Sgt. Harding came over and put his arm around my shoulder. He said he knew we were good people, and that the girl had said that only two boys had raped her, so that one of the boys who didn't do it might be one of my boys.

Mary F. Giles.

Subscribed and sworn to before me this 28th day of Feb., 1964

Nathaniel A. Miller, Notary Public.

My commission expires May 2, 1965.

**AFFIDAVIT OF JACQUELINE GILES**

Jacqueline Giles, being first duly sworn, deposes and says:

[fol. 29] 1. My name is Jacqueline Roseanne Giles. I am the sister of John G. Giles and James V. Giles, the defendants in the case of *State v. Giles*.

2. I was present on the morning of July 21, 1961 at our home on Batson Road in Spencerville, Maryland, when Sgt. Harding of the Montgomery County Police said that the girl had said that only two of the boys had raped her the night before.

Jacqueline R. Giles

Subscribed and sworn to before me this 28th day of Feb., 1964

Nathaniel A. Miller, Notary Public.

My commission expires May 2, 1965.

**EXCERPT FROM TRANSCRIPT OF TESTIMONY OF DETECTIVE JOHN T. KENNEDY, AT TRIAL OF STATE V. JOSEPH E. JOHNSON, JR., CRIMINAL No. 6134, CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND, SEPTEMBER 25, 1962**

**"Q. Did you examine this car, Detective Kennedy, that was on Batson Road? A. I looked in it and at the windows. I was around it and near it, as to what type of an examination you mean.**

**"Q. And you didn't find any bathing suits in the car did you? A. No, sir."**

**STATEMENT OF GEORGE TRENT**

**April 7-64**

**Dear Mr. Knapp:**

**I did have /did not have ✓ my bathing suit with me when I went to Batson Rd. with Stewart Foster, Bill Fellers, and Joyce Roberts on the night of July 20, 1961.**

**George Trent**

**Dave said thanks for the book.**

**[fol. 30]**

**HYATTSVILLE CITY POLICE**

**OFFICER'S REPORT**

**Type Case: Rape**

**Complainant: John Roberts**

**Address: 3803 Oglethorpe St., Hyatts, Md. Phone No.**

**WA 7-8491 Date 9/1/61 Time 8:30 A.M.**

**Place of Occurrence: 56th Ave., 5400 block, Edmonston, Md. Phone No. \_\_\_\_\_**



Date of Occurrence: August 26, 1961 Time 11:30 P.M.

Reported by: Marion Edith Roberts Add.: 3803 Oglethorpe St. Phone No. WA 7-8491

Victim: Joyce Carroll Roberts, 3803 Oglethorpe St., Hyattsville, Md. WA 7-8491

Color: W Sex F Age 16 Hgt. Wgt. Eyes Hair Comp.

Scars or Marks

(If none write none)

Clothing

Relationship to Complainant: daughter

M. O.

Details of Case (In Full)

On Saturday, August 26, 1961, at approximately 11:30 P.M., Joyce Roberts and Nancy Coleman, (W/F/16— address unknown) went to a party that was located in the 5400 block of 46th Ave., Edmonston, Md. While at the party Joyce Roberts was pushed into the bathroom by a Alton Hamilton, W/M, approx. 30 years old. There was a lot of screaming and hollering coming from the bathroom. As she came out of the bathroom, a John L. Sullivan, known as "Smooky", asked her what the trouble was, and she stated that she was raped. He then asked her if he could take her home. As they started out the door and went into the front yard, he pushed her to the ground and proceeded to rape her. There was approximately 30 persons at the party.

[fol. 31] This was reported to Mrs. Roberts by a Robert Bostic, 3906 Calverton Drive, College Park, Maryland, who received the information from Joyce Roberts, at the hospital, on August 30, 1961.

Joyce Roberts was put in the Hospital on August 27, 1961, approximately 5:30 A.M., and is now held for a mental patient.

(This was reported to P.G. Co., Det. Wheeler, who is working on the case.)

(Joyce Roberts is in P.G. Hospital, due to overdose.)

Cpl. K. Mouresau, Officer.

**REPORT OF INVESTIGATION OF DETECTIVE L. R. WHEELER**

**PRINCE GEORGE'S COUNTY POLICE**  
**Prince George's County, Maryland**

**REPORT OF INVESTIGATION**

**Report made by**  
**Detective L. R. Wheeler.**

**Subject of Investigation**

**Rape**

**Date of Report: September 19th, 1961**

**Initial or Supplementary: Initial**

**CRB No. 138284**

**DB No. 17608**

**Status of Investigation: Closed Unfounded.**

**Complainant:**

**Roberts, John, 3803 Oglethorpe St., Hyattsville, Maryland, Wa 7-8491.**

**Victim:**

**Roberts, Joyce Carroll — W/F/16 (Daughter to the complainant), 3803 Oglethorpe St., Hyattsville, Md.**

**Date, Time & Place of Occurrence:**

**August 26th, 1961 about 11:30 P.M. at 56th Ave. (5400 Block), Edmonston, Maryland.**

**[fol 32] Accused:**

**See action taken.**



26  
**Action Taken:**

The undersigned was contacted by Chief Silas Dennis of the Hyattsville City Police Department in reference to this case on September 1st, 1961 at 12:45 in the afternoon. At this time the known facts as stated in the original officer's report were given to the undersigned. At 3:40 P.M. on September 1st, 1961 the alleged victim in this case was interrogated by the undersigned in the presence of the nurse in charge of the wing—on A Wing in Prince George's Hospital. At this time this victim was being held in A Wing—Prince George's Hospital for mental observation as she had allegedly attempted suicide in the early A.M. of August 27th, 1961. At this time she stated that she had had sexual intercourse with the subject Alton Hamilton named in the original officer's report on several occasions and had been perfectly willing in doing so. She stated that on the night in question she had been to a party at the home of one Glen Hubert Boyles O Skip—W/M/38 at 5206 46th Ave., Edmonston, Maryland & while at the party at approximately 11:30 P.M. she went into the bathroom at this address and the subject Hamilton followed her in shutting and locking the door. She stated that he proceeded to have sexual intercourse with her at this time and that she was not willing to do this at this time but offered no resistance other than removing his hands from her body several times. She then stated that after this she left the house at 5206 46th Ave. and the subject John L. Sullivan (mentioned in the original officer's report) followed her outside of the house behind the shed nearby and proceeded to have sexual intercourse with her, lying on the ground. She stated that she was not willing at this time to have this relationship but she again offered no resistance. When questioned as to why she offered no resistance she stated that she would have voluntarily had intercourse with both of these subjects but she thought if she did so at this location they would tell the other boys at the party and all would want to do this.

265 action taken

[fol. 33] The alleged victim Joyce Roberts admitted during this interrogation that she has had numerous acts of sexual intercourse with many boys & men many of whom were unknown to her of the last two years. She also admitted to numerous acts of oral sodomy with several boys. She stated to the undersigned that if these two subjects (Sullivan & Hamilton) were charged with this offense of rape she would refuse to testify against them.

Complainant (the father of the victim) was advised of the information obtained in this case and was advised that he could charge both of these subjects with Contributing To The Delinquency Of A Minor. At this time he stated that he would just as soon forget about it as his daughter was being committed to the House of Good Shepherd in Baltimore, Maryland, and he did not wish to pursue this investigation any further.

**Summary:**

This case will be marked closed unfounded.

Detective L. B. Wheeler 10-18-61.

Wilson J. Purdy, Commanding Officer. Oct. 20, 1961.

**IN CIRCUIT COURT OF MONTGOMERY COUNTY**

**ANSWER AND MOTION TO DISMISS—Filed May 19, 1964**

Comes now the State of Maryland by James J. Cromwell, Deputy State's Attorney for Montgomery County and answers and moves to dismiss the Petition herein exhibited against it for the following reasons:

1. That the said Petition does not allege facts sufficient to show that the sentence or judgment was imposed in violation of the Constitution of the United States or the Constitution or laws of this State.



[Vol. 34] 2. That said Petition does not allege facts sufficient to show that the Court was without jurisdiction to impose the sentence.

3. That said Petition does not allege facts sufficient to show that the sentence exceeds the maximum authorized by law.

4. That said Petition does not allege that the sentence is otherwise subject to collateral attacks upon any ground of alleged error heretofore available under a Writ of Habeas Corpus, Writ of Coram Nobis or other common law or statutory remedy.

5. That the matters and things set forth in said Petition have been previously and finally litigated or waived in prior proceedings including the proceeding resulting in the conviction.

6. That the State of Maryland denies the allegations contained in said Petition.

Wherefore, the State of Maryland does request the Court to deny the Petition for relief filed herein under the Post Conviction Procedure Act and to dismiss the Petition herein.

James J. Cromwell, Deputy State's Attorney for Montgomery County, Maryland.

[fol. 23]

**PETITIONER'S EXHIBIT 1—EXCERPTS FROM  
ORIGINAL TRIAL OF CASE**

**JOHN BOWIE**, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

**Direct examination.**

**By Mr. Cromwell:**

**Q. Give the Court your name please.**

**A. John Alphonso Bowie, Jr.**

**Q. Are you employed, Mr. Bowie?**

**A. Yes, sir.**

**Q. Where do you work?**

**A. M. A. Oland & Son.**

**Q. Is that in the sod business?**

**A. Yes.**

**Q. I call your attention to the day of July 20, 1961, do you recall what you did on the evening of July 20, 1961?**

**A. Yes, sir.**

**Q. Would you tell the Court and the ladies and gentlemen of the jury, exactly what that was?**

**A. O.K. It was on the evening of the 20th, I got off from work. I was working for Mr. James Earle Lyons at that time. Myself and James was going swimming.**

**Q. When you say "James" whom do you mean?**

**A. The Giles boy, that was working with me at that time.**

[fol. 24] **Q. Do you see him in Court today?**

**A. Yes. He is sitting right there (indicating the defendant, James Giles).**

**By the Court:**

**Q. What kind of a coat has he got on?**

**A. It looks to be black.**



By Mr. Cromwell:

Q. What happened after you got off from work?

A. I had to go home and pick up my swimming trunks and I went to my house and got my swimming trunks and came back and then went to his house to pick up his swimming trunks and at that time we picked up his brother.

Q. Do you see his brother in Court today?

A. He is sitting beside him.

Q. What color coat does he have on?

A. It looks like tan. (The witness pointed to the defendant, John Giles.)

Q. What happened after that?

A. He went on down to the river and went swimming.

Q. Where did you go?

A. To Batson Road where Rocky Forge picks up.

Q. What time did you get there?

A. I imagine about six o'clock.

Q. Day or night?

[fol. 25] A. Evening.

Q. Is that area where you went swimming in Montgomery County?

A. It was in Montgomery County at one time and then it was in Howard County at another time.

Q. Is Batson Road in Montgomery County?

A. Yes.

Q. How long did you stay there, swimming?

A. Oh, we stayed there about an hour.

Q. All right. What did you do then?

A. Then we decided to leave and just as we were leaving I said it looked like a nice place to go fishing and the Giles boy said "Let's go fishing then."

Q. All right what happened then?

A. We went up to the store and got a six-pack of beer and then we came back and went to dig some fishing bait to go fishing with and we went on down the river fishing.

Q. At the time you went down the river fishing, who was with you?

A. John, James and the Johnson boy.

Q. Just you four?

A. That's right.

Q. Was it your car you were using?

A. Yes it was my car.

[fol. 26] Q. Approximately what time did you get back to this spot to go fishing, if you remember?

A. It was just about dark.

Q. What happened after that?

A. We went and fished for about an hour and a half to two hours.

Q. What happened then?

A. We came out from the river and we were walking up the road and we saw this car sitting there.

Q. Where was your car parked with reference to the car you saw parked?

A. My car was parked heading towards the water coming in down Batson Road, just before you get to the gate.

Mr. Cromwell: We offer these five pictures as State's Exhibits 1, 2, 3, 4 and 5. At this time we will only refer to State's Exhibits 3 and 4.

Mr. Prescott: No objection.

The Court: Admit the five pictures into evidence.

Q. I refer to State's Exhibits 3 and 4. Can you identify these pictures?

A. Yes, I can.

[fol. 27] Q. What is that picture marked State's Exhibit #4?

A. This picture shows coming into Batson Road, down towards the water.

Q. Is that looking up from the water?

A. This picture was taken looking up from the water.

Q. And I show you State's Exhibit #3 and ask you whether you can identify that picture.

A. Yes that picture was taken facing the water; going to the water.



Q. And is that Batson road running down there?

A. Straight through; that is Batson Road.

(Mr. Cromwell handed the pictures to the jury for examination).

Q. Referring to State's Exhibit #4, can you indicate on that where your car was? Hold it up so the jury can see it.

A. My car was approximately right along in there.

Q. And which way was it facing?

A. Towards the water.

Q. All right. What did you do after you returned to your car?

A. Put the tackle in and I told them to watch me, so I wouldn't back into the ditch or the car that was sitting up [fol. 28] there at the time and they got out and was watching and I backed on back and backed past the car.

Q. Do you know what kind of car it was that was up the road?

A. I know it was a Ford, but I don't know exactly what year it was. I didn't pay very much attention to it.

Q. Did you see any people in it?

A. I saw a girl and a boy.

Q. At the time you passed that car, did you have any conversation with the people in the car?

A. No, I didn't say anything to either one of them.

Q. Did either of the Giles boys have any conversation with the people in the car?

A. They were talking, but I couldn't say whether they were talking to the people in the car, or amongst each other.

Q. Where were they standing, with reference to the car you passed.

A. One was standing on one side to keep me from backing into the ditch and one on the other side to keep me from hitting the boy's car.

Q. How close were they standing to the boy's car?

A. I couldn't exactly estimate that.

Q. What happened after that?

A. I drove on up the road and turned around and asked [fol 29] them if they were coming with me and they said no, they would walk across the field.

Q. What happened then?

A. I drove up to the top of the hill and I stopped and went back down and asked them to come on with me.

Q. Why did you do that?

A. I don't know. I wanted to go somewhere, and I was sleepy and wanted somebody to keep me awake.

Q. All right, what happened then?

A. I backed down the hill and at this time one of the boys came up and said they were going to walk on; they didn't want to go anywhere else and so I pulled on off and I ran off the road and like I said I was sleepy and I decided I just about as well take a nap instead of going all the way back to Mt. Zion, and at two o'clock the police officers come up and woke me up.

Q. At the time you came back the second time to pick them up, did you have any conversation with them?

A. I just asked them if they were going up the road with me.

Q. What if anything did they say?

A. They said they weren't going right at the time.

Mr. Cromwell: You may cross-examine.

Mr. Prescott: I have no questions.

[fol 30] STEWART FOSTER, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct examination.

By Mr. Cromwell:

Q. Will you tell us your name, please?

A. Stewart Foster.



Q. Where do you live?  
A. Box 2303 Sandy Spring Road, Olney, Maryland.

Q. Directing your attention to July 20, 1961, and to the evening of that day, would you tell the Court and the ladies and gentlemen of the jury, what you did on the evening of July 20, 1961?

A. Well I had a date with Joyce and I went down and picked her up.

Q. About what time?

A. It was around 10:30 when I picked her up.

Q. Day or night?

A. That night and we talked to a few of her friends and we were supposed to meet them up at the Rock on Batson Road, Montgomery County, and we went on up there and when we got there we found some people up there that was hung up in a ditch.

Q. Who was with you?  
[fol. 31] A. George Trent, Billy Fellows, Joyce and myself.

Q. Approximately at what time did you arrive on Batson Road?

A. I guess about 11:30.

Q. Where were you riding in the car?

A. I was in the back seat.

Q. And where was Joyce riding in the car?

A. She was in the back.

Q. Was anybody else in the back?

A. No.

Q. What did you do when you arrived there?

A. Well we helped these people that were hung up in the ditch.

Q. Where was their car?

A. Right on Batson Road; right at the end.

Q. I refer you to what has been marked State's Exhibit #3 and admitted into evidence as State's Exhibit #3 and I ask you if you can point out on that picture where the other car was that you helped?

A. Right there.

Q. Point that out to the jury.

(The witness holds the picture up and indicates a spot to the jury.)

Q. Do you know the people that were in the other car?  
[fol. 32] A. No, sir.

Q. What happened after that?

A. Well, we stayed there and talked for a few minutes and watched for our friends to come up and they didn't come, so we started to go back home, and we got to the top of the hill and ran out of gas and we drifted back down and asked them if they would take us to get some gas.

Q. Who did you ask?

A. The other two couples we helped out of the ditch.

Q. What happened after that?

A. Billy and George went to get some gas.

Q. How did they go?

A. In the car we helped to get out of the ditch.

Q. Approximately what time was that?

A. It was close to midnight.

Q. Then what happened?

A. We pushed his car on off Batson road, on to a little dirt road that runs down to the river, and Joyce and I stayed there while they went to get gas, and I heard this noise behind us and I looked behind me and these guys were putting some fishing gear, it looked like, in the trunk.

Q. How many were there?

A. Four.

[fol. 33] Q. What happened then?

A. They got into the car and started backing out and I asked them if they had enough room to get by and one of them opened the door and looked and said, "Yes, we have got plenty of room" and they backed on up to the hard surface road and stopped for a few minutes and three of them got out and the other one drove on up to the top of the hill and the three that got out came back down to us.

Q. How far was it from where their car stopped back down to where you were?

A. Fifty feet.



Q. All right what happened then?

A. So they started down to the car and I locked the doors and I got a little bit shaken up.

Q. Why?

A. Well, I don't know; three subjects getting out of a car and coming down towards us, and I didn't know what was going to happen, just Joyce and I there by ourselves.

Q. Were there any lights in that area?

A. No; just the lights on that other car.

Q. Were there any houses in the area that you knew about?

A. About fifty feet from there, right off to the other end of the road; so they came on down to the car and asked me for a cigarette and I said I didn't have any and [fol. 34] then they said they wanted my money and I said I didn't have any money either.

Q. Were your windows open or closed at the time they came down to your car?

A. I had a crack in it.

Q. In which window?

A. The right rear window.

Q. Where were you sitting in the back seat?

A. By the right door.

Q. At that time was Joyce still in the back seat?

A. Yes.

Q. What happened after that?

A. Well the car backed down off the hill and they walked back up and talked to the guy that was driving the car and then the car pulled on off and they came back down and walked past the car and I could hear this mumbling and they came back up and said they wanted the girl.

Q. What did you say?

A. And I said "You aren't going to get the girl" and they said "Well I will kill your fucking ass" and I heard a brick go through the window and one of them said "Let's shoot the son-of-a-bitch."

Q. What did Joyce Roberts say during this?

A. I don't know. I was so scared, and I said "Joyce,

Q. Point that out to the jury.

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make a run for it and I will hold them back as long as [fol. 35] I can."

Q. After the brick hit the window, what happened then?

A. I jumped out and somebody threw a rock and smacked me right beside the face with it and it knocked me out for a while and when I come to, I looked up and somebody put a club up against my head and said "I want your money."

Q. What do you mean by a club?

A. It was about sixteen inches long, and about this big around.

Q. All right.

A. So he held it up against my head and took my wallet and my money.

Q. How much money did they take?

A. I only had twenty-five cents in my pocket.

Q. What happened then?

A. They walked behind the car and I could hear this mumbling and they started on up through the woods and I jumped up and hollered to Joyce and said "I will get some help" and I went on up to this house and knocked on the door and I was all full of blood and shook up and the lady looked at me and she called her husband and he came down the steps and he looked at me and he called the police, and I turned around and started back down and at the same time the police got there and we heard the guys running off through the woods.

[fol. 36] Q. Did you hear that yourself?

A. Yes, I heard it.

Q. Tell what happened then.

A. The officers and I walked up into the woods and found the girl laying there and all she had on was her blouse.

Q. What girl?

A. Joyce Roberts.

Q. What was her condition?

A. She was kind of whimpering and her legs were all scratched up and she was in pretty bad shape.

Q. How was she dressed?

A. All she had on was a blouse.



Q. Did she have anything else on besides the blouse?

A. No.

Q. Where were her other articles of clothing?

A. Lying a few feet away from her.

Q. Did she have any shoes on?

A. No, sir.

Q. What type of area was it where you saw her?

A. It was about twenty feet off in the woods from the road.

Q. What happened after that?

[fol. 37] A. Well, the officers went up there and she was laying there and we helped her up and she put her clothes on and we took her back to the car and they called the ambulance and they took both of us to the hospital.

Q. Can you identify any of the three men by sight whom you saw come up to the car that night?

A. I cannot identify them; no.

Q. Can you describe them?

A. When they backed up and turned the lights on I could see that they were four colored males and all young looking. They looked like about nineteen to twenty years old.

Q. What happened after the ambulance arrived?

A. They took us both to the hospital.

Q. What happened to you at the hospital?

A. They had to put eight stitches in my mouth.

Q. What had happened to require that?

A. When these guys hit me up on the side of the head with a brick.

Q. Where did it strike you?

A. Right on this side of my face.

Q. At the time that you have testified you hollered to Joyce in the woods, did you know where she was?

A. No. I just kept hearing all the noises up there and I thought I could hear her voice a few times. I was shook up anyway and a little scared.

[fol. 38] Q. Why didn't you, yourself, go into the woods at that time?

A. Well they had messed me up once, and I couldn't handle all of them by myself and all I thought about was calling for some help. I was scared anyway.

Q. At the place where the car was parked and where you subsequently found Joyce, was that in Montgomery County?

A. Yes, sir.

Q. I show you pictures which have been marked State's Exhibits number one and State's Exhibit number two, and admitted into evidence. Can you identify either or both of these pictures?

A. Yes, sir; that is the car I was in.

Q. Referring first to State's Exhibit number one, and I will turn it up so the jury can see it—can you indicate where you were seated in that car?

A. Right at the back door.

Q. And is that roadway under the car called Batson Road?

A. Yes, sir.

Q. Where was Joyce seated in that car?

A. She was right beside me, in the back.

Q. Referring to the right rear window and the right front window; do you know what caused them to be broken?

[fol. 39] A. They were broken by rocks and stones thrown by these guys.

Q. What was the condition of those windows before these three men came up to your car?

A. Perfect. There wasn't anything wrong with them.

Q. Was the car locked before they started to pick up bricks?

A. Yes, sir.

Q. I refer to State's Exhibit #2 and ask you whether you can identify that?

A. Yes. It is the same car.

Q. Did you get out of the right rear door of the car?

A. Yes, sir.

Q. Where did you lay on the ground?

A. Right there, where that pool of blood is.



**Q. Can you identify that as blood which came from you?**

**A. Yes, sir.**

**Mr. Cromwell: Cross-examine him.**

**Cross examination.**

**By Mr. Prescott:**

**Q. You say this was your automobile?**

[fol. 40] **A. No, it was George Trent's.**

**Q. And George drove it out there?**

**A. Yes, sir.**

**Q. How long had you known Joyce Roberts?**

**A. I don't know. It was a right good while.**

**Q. How often did you date her?**

**A. I was dating her regular.**

**Q. Did you all make a habit of going on dates, starting at 10:30 in the evening?**

**Mr. Cromwell: Objection.**

**Judge Pugh: Over-ruled.**

**A. No. I was just a little late getting down there. George first went to pick his girl up, and I was late getting to Joyce's house.**

**Q. Was George's girl friend with you on this occasion?**

**A. No. She couldn't come.**

**Q. So you and some other guy named Billy Fellows, and Joyce, all went out to this spot in the woods; is that right?**

**A. We were supposed to meet some of her girl friends.**

**Q. Who were they?**

[fol. 41] **A. I don't know their names.**

**Q. How do you know you were supposed to meet them?**

**A. We were talking to them after I picked Joyce up.**

**Q. Where were you talking to them?**

**A. At her girl friends' house. I don't know their names. I know them to see them, and to speak to them.**

**Q. Did you all have your bathing suits with you that evening?**

**A. I had mine in the car, and George had his in the car.**

**Q. Did Joyce have hers with her?**

**A. I guess she did, but I don't know.**

Q. You said you went out there to go swimming, didn't you?

A. That is what we were planning on doing.

Q. Why were you back so far from the river?

A. Because we ran out of gas. That is why we parked there.

Q. You said you had gone down and then driven back up here.

A. We waited for them and they didn't show up, and we started back home.

Q. Your car was parked right at the end of the pavement wasn't it?

A. That is right.

[fol. 42] Q. And you saw this other car was parked in a ditch there?

A. Yes.

Q. And I guess you parked your car in the ditch, didn't you?

A. No. We parked right at the side of the ditch and helped them get out of the ditch.

Q. Isn't that in the ditch, where your car is sitting?

A. No.

Q. How wide is that road there?

A. It is wide enough for two cars to pass on.

Q. What happened to George Trent and Billy Fellows that evening?

A. They went to get gas.

Q. Where did they go after they went to get gas?

A. I don't know. They didn't come back. I asked them the next day why they didn't come back, and they said the people who were taking them wrecked their car.

Q. Where?

A. In Laurel.

Q. They had to go all the way to Laurel to get gas?

A. Yes; No gas stations were open at that time.

Q. And George just left his car out there with you and Joyce?

A. He was coming back after he got the gas.



[fol. 43] Q. Did he ever come back?

A. I don't know because I wasn't there. They took us away in the ambulance.

Q. How old is George Trent?

A. Twenty.

Q. How old is Fellows?

A. Nineteen, or twenty.

Q. How old are you?

A. Twenty-one.

Q. What did you three boys take Joyce out there for that night?

A. I told you we were going to meet some friends up there and go swimming.

Q. You didn't take her out there to have sexual relations with her, yourself, did you?

Mr. Cromwell: Objection.

Judge Pugh: Over-ruled.

A. No.

Q. You say you saw these three boys, or four boys, putting tackle in their car?

A. Yes.

Q. How far was their car away from your car?

A. I don't know. It wasn't too far.

[fol. 44] Q. It was a right dark night, wasn't it?

A. Yes, but his lights was on his car. The headlights was on and the tail light was shining.

Q. This was a heavily wooded area, wasn't it?

A. Yes, sir; to the right of us it was.

Q. Really on both sides it is heavily wooded, isn't it?

A. Well it is kind of thick on that side because it grows up in honeysuckle.

Q. You wouldn't say there is woods on both sides?

A. Further down, yes, but there is mostly honeysuckle right there.

Q. At any time did you ever hear Joyce scream, or holler out?

A. I think I heard her voice a couple of times.

Q. Did Joyce have sex with her?

A. I guess she did, but I don't know.

Q. You didn't hear her calling for help, or screaming, did you?

A. I just heard that whimpering noise.

Q. You told her you were going for the police?

A. Yes, I called out to her that I was going to get some help.

Q. She didn't tell you to hurry up, did she?

A. No. She didn't say anything.

Q. Do you recall telling these boys that there were three other boys with you, rather than two?

[fol. 45] A. No. I didn't tell them anything.

Q. You remember cussing them out, don't you?

A. I did not do that.

Q. You didn't call them "black mother fuckers?"

A. No, I did not.

Q. Are you sure you didn't say that?

A. No. I know better than to say something like that when there were three of them against me.

Q. Had you been drinking on this occasion?

A. No.

Q. Nothing at all?

A. No.

Q. Had Joyce had anything to drink?

A. No.

Q. What time did you say you arrived out there?

A. I said it was close to midnight.

Q. What time did this happen, that these boys came up there?

A. Just around midnight. I don't know exactly what the time was.

Q. Did you say you fellows got out there and sat there for a little while and then drove up again?

A. We started back home and ran out of gas, and we let the car drift back down.

Q. How long did you all sit out there before you started [fol. 46] back home?

A. I don't know. I haven't the slightest idea. We were talking together.



Q. None of you went down toward the river, did you?

A. No, sir. Now because I wasn't there. They took him

Q. And yet you went out there to go swimming?

A. That is right.

Mr. Prescott: I have no further questions.

The Court: Is that all?

Mr. Cromwell: That is all, your Honor.

The Court: You may step down.

The Court: During the recess, ladies and gentlemen, you will not discuss this case among yourselves, or allow anybody to discuss it in your presence. We will recess for luncheon until 1:30 p.m. Is there any request to have the jury locked up, gentlemen?

Mr. Prescott: No, your Honor.

(Luncheon recess.)

[fol. 47] DR. SIDNEY LEVENTHAL, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct examination.

By Mr. Kardy:

Q. Doctor, would you state your full name?

A. Sidney Leventhal.

Q. What is your profession?

A. Physician.

Q. How long have you practiced medicine?

A. Twenty-three years.

Q. And what are your qualifications in that regard, sir?

A. I was a graduate of the George Washington University School of Medicine in 1938, three years of internship and residency training, military service and practicing in Silver Spring since 1946.

Q. Doctor, directing your attention to the date of July

21, 1961, at or about 2:30 A.M. did you have occasion to examine Joyce Roberts on alleged rape?

A. Yes.

Q. Tell us what examination you made on Joyce Roberts and what the results of that examination were, sir.

A. At the time I examined her, she had been in the [fol. 48] Sanitarium for about an hour then I believe. She had abrasions, that is, scrapes of the skin over her shoulders, her knees and her legs. There were fragments of earth and leaves that were adherent to the back part of her body. We did an internal female examination on her and the secretions in the vagina at the time and they were found to contain numerous spermatozoa cells.

Mr. Kardy: Your witness.

Cross examination.

By Mr. Prescott:

Q. You don't know what caused these abrasions and scratches, do you, doctor?

A. I do not.

Mr. Prescott: Nothing further.

Judge Pugh: What time did you examine her?

A. 2:30 A.M.

(The doctor was excused.)

DR. DAN DeVRIES, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

[fol. 48½] Direct examination.

By Mr. Cromwell:

Q. Would you identify yourself for the record, please sir? Give us your name and address.



A. My name is Doctor Dan DeVries and I live in the Washington Sanitarium in Takoma Park.

Q. What is your occupation?

A. I am an interne in Washington Sanitarium.

Q. And what is your educational background?

A. I took my medical training in Holland. I am a graduate doctor in the Netherlands, and I took my examination in order to take an internship in the United States.

Q. Are you taking an internship now?

A. Yes, I am.

Q. Directing your attention to the day of July 21 of 1961, did you have occasion to examine a man by the name of Stewart Foster?

A. I do not remember the name, but if that is the red-headed man who was with the girl in the rape case, yes I did.

Q. What examination did you make on him, and what were the results.

A. I found he had a laceration of his upper lip on the left outer side.

Q. And what, if any, treatment did you give him as a [fol. 49] result of your findings?

A. I sutured the laceration. I stitched him.

Q. How many stitches were required to close the wound on his face?

A. I don't remember the number.

Mr. Cromwell: You may cross-examine.

Mr. Prescott: No questions.

Mr. Kardy: May the doctor be excused?

The Court: Any further use for the doctor, gentlemen?

Mr. Prescott: No.

The Court: Doctor, you may be excused.

JOSEPH S. CUNNINGHAM, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct examination.

By Mr. Cromwell:

Q. Mr. Cunningham, would you give us your name and [fol. 50] your address, please.

A. Joseph Cunningham, Batson Road, Spencerville, Maryland.

Q. Mr. Cunningham, directing your attention to the day, or the night of July 20th, 1961, in the early morning of July 21, 1961, did there come a time when someone came to your house that night?

A. Yes, sir.

Q. Do you know who that person was?

A. I didn't know at the time.

Q. Did you answer the door yourself?

A. Yes, I did.

Q. What was the physical appearance of the person who came to the door, to the best of your recollection?

A. Well physically the sight of his face was somewhat bloody. I couldn't tell from what source, but it was covered with blood.

Q. Do you recall approximately what time of the day or night this was?

A. It was around two o'clock in the morning, as I recall it.

Q. Did you have a conversation with him at that time; did he say anything to you?

A. Yes.

Q. As a result of that, did you call the police?

[fol. 51] A. Yes.

Q. Did you subsequently leave your home?

A. Yes.





A. Well I was laying there and he leaned over on top of me and the other two boys had sticks and they were [fol. 62] beating around in the woods, trying to find me, and they were whistling to each other and calling back and forth.

Q. Did John Giles say anything to them?

A. No. I told him to be quiet and not call the other two.

Q. What did he do?

A. He said he wanted to call the other two.

Q. Did he?

A. No.

Q. Was there any conversation between you and John Giles before the other two came over?

A. Not that I recall.

Q. What happened when the other two came over?

A. John Giles and I got up and started to move.

Q. Why did you start to move?

A. I tried to convince him that he should let me go further back so the other two men couldn't find me and he could come after me later.

Q. Why did you tell him that?

A. I thought if I could get further away from him I could get away from all of them.

Q. And is that when the other two found you?

A. Yes.

Q. What happened then?

A. They all leaned around me and they were kissing me [fol. 63] and everything, and one of them reached for my zipper.

Q. You say John Giles found you first and you pointed him out. Do you see in this court room one of the other two that came there when you were in the woods?

A. Yes.

Q. Will you point him out?

A. The boy in the dark jacket (indicating the defendant, James Giles).

Q. Proceed with your testimony as to what happened when all three of them were there in the woods with you.



Q. Where did you go?

A. To the foot of the driveway.

Q. Did the person who came up to your house go before you, or later than you?

A. He went before me.

Q. At the foot of the driveway what did you see; what did you observe?

A. A police car standing there with its headlights shining on another car, a sedan, which was facing in the opposite direction.

Q. Did you see any people?

A. Shortly thereafter a police sergeant and the boy who had come to the house and a girl came out of the woods on the opposite side of the road.

Q. Approximately how far were they from you at that time?

A. When they first came into sight it would be probably twenty-five feet, and they passed within maybe four or five feet of me.

Q. Is that spot which you have just described in Montgomery County?

A. Yes, sir.

[fol 52] Q. What is the condition of that area with reference to lights?

A. There are no lights.

Q. After they came into view, what, if anything, did they do?

A. The Sergeant was helping the girl and he took her up to his police cruiser and had her sit on the back seat of the cruiser while he got on the radio and called for an ambulance.

Q. Did there come a time when an ambulance came?

A. Yes, sir.

Q. Approximately how long afterwards was that?

A. Ten to fifteen minutes, perhaps.

Q. And were the boy and the girl taken away in the ambulance?

A. Yes, they were.

**Mr. Cromwell: Cross-examine.**

**Cross examination.**

**By Mr. Prescott:**

**Q. How did the girl appear to you, sir; did she appear to be shaken up at all?**

**Mr. Cromwell: I object.**

**The Court: Over-ruled.**

**[fol. 53] A. Do you mean physically?**

**Q. Physically or mentally; either one.**

**Mr. Cromwell: He certainly cannot testify to the mental state. I object.**

**The Court: Just describe the physical appearance as you saw it.**

**A. She walked out of the woods, with the Sergeant assisting her, and walked across to the car, where he told her to sit down in the car. She was not hysterical, if that is what you mean.**

**Q. Did she appear to be disturbed in any way?**

**A. I don't know if I can honestly answer that. To me there was not an immediate obvious sign of disturbance, but I am not qualified to judge that.**

**Q. Did she appear to be cool, calm and collected?**

**Mr. Cromwell: Objection.**

**The Court: Over-ruled.**

**A. I would say yes.**

**Mr. Prescott: That is all.**

**Redirect examination.**

**By Mr. Cromwell:**

**[fol. 54] Q. Mr. Cunningham, could you tell from your observation what the state of her mind was at that time?**

**A. No, sir.**



Q. Could you tell from your observation and what you saw what her emotional state was at that time?

A. I don't think I can say that about anyone.

Mr. Cromwell: That is all.

Mr. Prescott: No further questions.

Mr. Cromwell: May Mr. Cunningham be excused?

The Court: Any further use for Mr. Cunningham?

Mr. Prescott: No.

The Court: You may be excused.

JOYCE CAROL ROBERTS, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct examination.

By Mr. Kardy:

[fol. 55] Q. Would you state your full name, please?

A. Joyce Carol Roberts.

Q. Where do you live?

A. 3303 Oglethorpe Street.

Q. How old are you, Joyce?

A. Sixteen.

Q. When were you sixteen?

A. Last February.

Q. Directing your attention to the date of July 20, 1961, did you have occasion to see one, Stewart Foster, on that date?

A. Yes, sir.

Q. What time did you see him?

A. I'd say about 9:30 or 10:00 o'clock.

Q. In the evening?

A. Yes.

Q. Did he take you anywhere?

A. Well, he was supposed to be over about 7:30 or 8:00 o'clock and we were supposed to go out, but he was late.

The boy that he had with him and the other two boys want to see another girl and so they came up to my house after that and we decided we wanted to go swimming and we went to some girl friends' house and there were two boys and another girl and so they told us that they would drive up there later.

[fol. 56] - Q. Where were you going to go swimming?

A. At Rocky Gorge.

Q. Is that off Batson Road?

A. Yes.

Q. Did you proceed in a motor vehicle with Stewart Foster to Batson Road?

A. Yes.

Q. Who else was in the car with you?

A. George Trent and Billy Fellows.

Q. Where were you sitting and where was Stewart Foster sitting?

A. In the back seat.

Q. What time did you get to Batson Road?

A. About 11:00 or 11:30.

Q. What happened when you got to Batson Road?

A. When we come down the road there was a car over to the side, stuck in a ditch, and the boys in our car got out to help get the car out of the ditch and when they had finished the people stopped and the kids were all talking to each other and we waited around talking to them for a while, and it was getting pretty late and our friends hadn't shown up yet, so we decided we had better go on back and see if we could find them, and so we drove about half way up the hill, up Batson Road, and our car ran out of gas, so we coasted the car back down the hill and there was the [fol. 57] other two couples in the other car and they said they would help by taking the boys to get gas and the other two boys then got in the other car with the two couples and they drove up the road towards Laurel to get gas.

Q. And that left you and Stewart Foster alone in the car?

A. Yes.



Q. And the car was out of gas?

A. Yes.

Q. And where were you sitting when they left to get gas?

A. In the back.

Q. In the left rear back seat?

A. Yes.

Q. And Stewart Foster was on your right?

A. Yes.

Q. As you were sitting there, what happened?

A. The other car had been gone about fifteen minutes, I guess; maybe not that long, and we heard car tires in back of us slightly and we turned around and there was a car sitting down at the end of the little dirt road we had pulled off on and there was a lot of lights and they were opening the trunk to put something into the trunk and the doors were open, and we saw that there were four colored males and so Stewart said that he thought we ought to lock [Vol. 58] the doors.

Q. And did he lock all the doors?

A. Yes.

Q. What did he do with the windows?

A. He raised the windows up.

Q. Did the four men you saw down there come up towards your car?

A. Well the driver of the car got back in and he backed the car up the dirt road and the other three walked and they came up and we asked if they had enough room to get by and they said yes and they went on past.

Q. Did you stay in the car when that was asked?

A. Yes.

Q. Who asked them that?

A. Stewart asked them if they had enough room.

Q. Was he inside or outside of the car when he asked them that?

A. Inside.

Q. And the doors were locked and the windows were rolled shut?

A. Yes.

Q. What happened after the car went past?

A. The driver backed up around and went up the dirt road and the other three stood there and they asked Stewart if he had a cigarette and we told them no, and then [fol. 59] they walked back of the car and said something to the driver and he drove on off and they came back down and said that he had left them there and would we give them a ride, and we said it wasn't our car, and it was out of gas anyway and we didn't have the keys, so after that they told Stewart Foster that they wanted his money and he told them he didn't have any money, and then they went behind the car and said something to each other and then came back around and they said that they wanted his girl, and he said that they couldn't have the girl and then they said "Well, we are going to get her" and he said "You are going to have to kill me first" and they said "We can drag your ass out of the car."

Q. These are the words they used?

A. Yes, sir.

Q. What did they do.

A. Stewart just sat there and he told me if they tried to get into the car that the only thing I could do was to try to run and he would try to hold them back, and if they did get in I should get out the other side and run, because there were three of them and they were all three on his side and after a few minutes I saw—well they broke the glass in the back window. They used a rock and I don't know what they used afterwards, but they broke the windows out and opened the door and Stewart told me he was going to try to hold them back while I got away and as he [fol. 60] got out of the car I got out my side and ran.

Q. Did Stewart use any profanity to them?

A. No, sir.

Q. And after the window was broken, Stewart told you to run for it?

A. Yes.

Q. What did you do?

A. I opened the door on my side and got out and I ran.



A. One of the boys reached for the zipper in my shorts and I said "No" and one of them said "Either you do it or we will do it" and so I said "I will" and I took my shorts and my underpants off.

Q. Why did you do that?

A. I was completely dazed. There wasn't anyone to yell to for help; there wasn't anything I could do, and they were all three standing around me.

Q. Did you scream?

A. No, there wasn't any sense in screaming.

Q. Did there come a time when one of the three had intercourse with you?

A. Yes.

Q. Who was the first one to have intercourse with you? [fol. 64] A. John Giles.

Q. What did he do with his private parts?

A. He put his private parts in my private parts.

Q. After John Giles had intercourse with you, who was the next one that had intercourse with you?

A. The smaller of the three boys.

Q. Do you recall his name?

A. Johnson.

Q. Did he put his private parts in your private parts?

A. Yes, sir.

Q. Who was the last one to have intercourse with you?

A. James Giles, the one right there.

Q. What did he do with his private parts?

A. He put his private parts in mine.

Q. Are you sure of that?

A. Yes.

Q. While his private parts were in you, what, if anything happened?

A. Well he stayed there with me for about five or ten minutes and then I heard Stewart Foster—he was down at the car, and I heard him yell that he was going to get the police or get help and before I could say anything he said [fol. 65] he was going to run. I heard him running. He said he was going some place up the road, and in about an-

other five minutes we saw headlights coming down Batson Road and we saw it was a police car, and all three boys got up and went down through a path in the woods.

Q. The three boys ran, did they?

A. Yes.

Q. And what did you do?

A. I just lay there. I didn't know what to do.

Q. Did you scream then?

A. No. I was crying, and Stewart came up to me and the police officer came up and they helped me on with my clothes and helped me down to the police car.

Q. After you got down to the police car, what happened then?

A. He asked my name and address and then he called the ambulance.

Q. And then you were taken to the Washington Sanitarium Hospital?

A. That is right.

Q. After you were treated at the hospital, where did you go from there?

A. We went to the Glenmont police station.

Q. At the Wheaton-Glenmont Police station did you see James Giles at the station?

[fol. 66] A. Yes, sir.

Q. Tell the Court and the ladies and gentlemen of the jury the circumstances under which you saw James Giles at the Wheaton-Glenmont Station, on the early morning of July 21, 1961.

A. Well I was there and we went through our—they interrogated us and found out what had happened the night before and then the next morning they asked me if I could identify any of the men and I said "yes" and they took me to a line-up of six men and asked me to point out if there were any of the men there whom I had seen the previous night and I picked him and the other boy, Johnson, out.

Q. You picked out James Giles and Johnson?

A. Yes.



Q. Thereafter, on July 23, 1961, did you have occasion to view another line-up?

A. Yes, sir.

Q. Where was that and what did you see in the line?

A. We went to the Rockville detention quarters, in the jail.

Q. Did they have a line-up there?

A. Yes, six or seven men were lined up.

Q. Did the police tell you who to pick out in that line-up?

A. No, sir.

[fol. 67] Q. In the line-up on July 21st did the police tell you who to pick out?

A. No.

Q. In the line-up on July 23rd, who did you see in that line-up?

A. I saw John Giles.

Q. And that is the defendant seated here?

A. Yes, sir.

Q. Getting back to the early morning of July 21, 1961, did either one of these defendants here, either John Giles or James Giles, kiss you?

A. Yes, sir.

Q. When did they kiss you?

A. While they were having intercourse with me.

Q. Did they use any contraceptives?

Mr. Prescott: I object to these leading questions.

The Court: Don't lead the witness.

Q. Do you recall that they used any contraceptives if you know?

A. No, sir.

Q. Did you at any time while you were in the woods call these boys over and ask them to have intercourse with you?

[fol. 68] A. No, sir.

Q. When you were sitting in the car and these three boys broke the glass in the car what, if anything happened to the glass, as far as you were concerned?

A. I was sitting on the far side away from the window and when they broke the glass, it shattered and cut my leg.

Q. What if anything did you do with your clothes that you took off after they said they were going to take them off?

A. I don't recall. I just laid them to the side.

Q. How were you dressed that evening when they were down on top of you?

A. I just had on a blouse.

Q. Did you have any pants on?

A. No.

Q. Did you have any moccasins or shoes on?

A. Well I did at first but I don't know what happened to them.

Mr. Kardy: Your witness.

Cross examination.

By Mr. Prescott:

Q. Carol, how long have you known the boy you were out with that night, Foster?

[fol. 69] A. About five or six weeks.

Q. How often had you been out with him?

A. Every night for about three weeks.

Q. How old is Foster?

A. Twenty-one.

Q. How old did you say you were?

A. Sixteen.

Q. Who were these other two boys that were with you?

A. Two friends of his.

Q. How old were they?

A. I don't know.

Q. How long had you known them?

A. They were just casual acquaintances.

Q. Where had you met them?

A. One of them was dating a very close girl friend of mine.



Q. What time did you say you left home that evening?

A. About ten o'clock.

Q. And you had a pre-arranged date with Foster?

A. Yes, sir.

Q. And he was due there at what time?

A. About 7:30 or 8:00.

Q. And if I told you he said it was 10:30 when he got [fol. 70] there, would you say that was wrong?

A. No, sir.

Q. Was it 10:30 or 9:30 when you left home that evening?

A. I am not sure.

Q. Do your parents let you go out at any hour of the night you want to?

Mr. Kardy: Objection.

The Court: Sustained.

Q. Did all three of the boys come to pick you up that evening?

A. They came to pick me up, yes, sir.

Q. And you went out with three boys in the car?

A. They were supposed to take me down there with Foster and we were to meet our friends.

Q. Take you where?

A. To Batson Road.

Q. What time did you arrive at this place on Batson Road?

A. About 11:00 or 11:30.

Q. Where did you go between the time you left home and the time you arrived at Batson Road?

A. Actually no place. It takes that long to get there from [fol. 71] my house.

Q. How far is it from your house to Batson Road?

A. I couldn't say for sure.

Q. If you went directly out there it wouldn't take over half an hour, would it?

A. We went through Laurel.

Q. Even going through Laurel, it wouldn't take over an hour, would it?

A. I wouldn't say for sure.

Q. What did you do in the meantime?

A. We didn't do anything.

Q. Did you have any bathing suit with you?

A. My girl friend had it in her car.

Q. Where was your girl friend?

A. Supposed to be coming up to meet us.

Q. Why didn't you take it with you?

A. Because it was at her house.

Q. And you didn't pass by her house on the way?

A. No.

Q. What time of night was it when these boys actually showed up there at the car on Batson Road?

A. About 12:00 o'clock.

Q. And you were there with them from 12:00 until 2:00 o'clock in the morning?

A. I guess I was.

[fol. 72] Q. You don't know how long you were there with them?

A. No.

Q. What happened during all that time you were there with them?

A. You mean the colored men?

Q. Yes.

A. As I stated before they were parked down at the end of the road. Our car had run out of gas and the other two boys in our car had gone to get gas, with the car that was already there.

Q. What happened to these other two boys that went off to get gas? Did they ever come back?

A. No, sir.

Q. Where did they go; do you know?

A. I don't know.

Q. Did you ever talk to them afterwards, to see what happened to them?

A. No.

Q. Have you ever seen them since?

A. No.



Q. Do you know where they live?  
A. In Laurel somewhere.  
Q. You have never seen them since, or talked to them?  
[fol. 73] A. I have seen them but I didn't have a chance to talk with them.

Q. Never discussed this case with them?  
A. No.  
Q. Have you discussed this case with anybody else?  
A. With the State's Attorney and the police.  
Q. With Foster?  
A. No.  
Q. You haven't discussed it with him since?  
A. Briefly.

Q. Have you been out on a date with him since?  
A. Yes.  
Q. You all haven't discussed this matter at all?  
A. No.

Q. Now you recall testifying at the preliminary hearing in this case?  
A. Yes, sir.

Q. Do you recall telling the Court there that only two of these boys had intercourse with you?

A. I recall saying that intercourse was had three times.

Q. Did you tell them only with two of the boys?

A. I was confused.

[fol. 74] Mr. Kardy: If Mr. Prescott is going to impeach the witness with testimony given at the preliminary hearing, I think the proper way to do it is to read the record.

Mr. Prescott: I don't have a record of the preliminary hearing. I only have what information I could get from the attorney who represented these boys and no longer represents them. I certainly think I should be able to—

The Court: You may recite it the best you can.

Mr. Kardy: We object to that. It would be hearsay as to what Mr. Prescott heard from another attorney.

The Court: Over-ruled.

Mr. Kardy: We object.

The Court: Reframe it, Mr. Prescott.

Q. At the previous hearing in this cause, in answer to the question "How many of these boys actually had intercourse with you?" didn't you tell the Court that only two of them had had intercourse with you?

A. Yes, sir.

Q. And didn't you also tell the police officer, immediately [fol. 75] after this happened that only two of them had intercourse with you?

A. Yes.

Q. And now you want this jury to believe that all three of them had intercourse with you; is that right?

A. Yes.

Q. Why are you telling a different story today than the story you told the police immediately after this happened, and the story you told at the preliminary hearing?

A. Because I have thought about it.

Q. What do you mean you have thought about it?

A. Well at the time I was confused—people were giving names, and I had no idea of what the boys' names were.

Q. Who was given names?

A. After the line-up, after I had identified all three of the men.

Q. As a matter of fact, at the line-up you were able to identify them because they called them by names, and that is the only way you identified them, isn't that so?

A. No, sir.

Q. You couldn't identify James Giles at that line-up until they told you his name, could you?

A. Yes.

Q. You are positive of that?

A. Yes.

[fol. 76] Q. And you were confused at that time, and you later learned that they all had names and then you decided that all three of them had intercourse with you; is that correct?

A. No.

Mr. Prescott: Let's approach the Bench, Mr. Prescott, if you are going to make a statement.



Q. What did you think?

A. I don't recall now what I thought.

Q. You don't recall now what you thought at that time?

A. No, sir.

Q. You know now what you want to say, though; is that right?

A. Yes.

Q. And you want to tell a different story here from what you told at the preliminary hearing?

A. I only told the truth.

Q. And you weren't telling the truth before; is that right?

A. Yes.

Q. You say all you had on was a blouse, a pair of shorts and a pair of underpants and shoes; is that correct; that night?

A. I had a bra on.

Q. You didn't tell about that before, did you?

A. No, sir.

Q. Now you say you took off your own clothes, Joyce?

A. Yes, sir.

[fol. 77] Q. And you actually folded them up, didn't you?

A. No, I did not.

Q. And you laid them where you knew you could get them when you got through; is that right?

A. No, I did not.

Q. You didn't do that at all?

A. No, sir.

Q. Did you ever ask these boys not to have intercourse with you?

A. As far as saying it in those words; no sir.

Q. You didn't scream or holler out, did you?

A. There was no one to scream for.

Q. Had you ever been in this spot with Foster before?

Mr. Kardy: Objection.

The Court: Sustained.

Mr. Prescott: If it please the Court—

Mr. Kardy: Let's approach the Bench, Mr. Prescott, if you are going to make a statement.

**Bench Conference**

**The Court: Reframe the question.**

[fol. 78] **Q. Joyce, have you ever been in this area before with Foster?**

**A. Yes, sir.**

**Q. How often had you been out there with him before?**

**A. About twice.**

**Q. What had you gone out there for on those occasions?**

**Mr. Kardy: Object your Honor.**

**The Court: What is the materiality?**

**Q. Were you ever out there in the daytime?**

**A. Yes, sir.**

**Q. And had you ever seen the Cunningham home when you were there?**

**A. No, sir.**

**Q. Why hadn't you seen it?**

**A. I didn't look for it.**

**Q. Well it is right there, isn't it?**

**A. I don't know. I have never seen it.**

**Q. You still haven't seen it?**

**A. No, sir.**

**Q. And the reason you didn't call out was because you didn't know anybody was around?**

**A. It was a most desolate area.**

**Q. When Foster told you he was going to call the police [fol. 79] what, if anything, did you say to him?**

**A. I didn't say anything.**

**Q. You didn't urge him to hurry up; or anything of that nature?**

**A. I heard him running.**

**Q. But you didn't call out to him to say anything, nor call for help?**

**A. No.**

**Q. You didn't tell him what was happening to you?**

**A. No, sir; he knew what was happening to me.**



Q. Now Joyce, when this boy John first found you, didn't you tell him if he would help you get away that you would let him have a little? Do you remember that?

A. Yes, sir.

Q. And did you plan to let him have a little, if he helped you?

A. No, sir.

Q. How long were you and John there before these other two boys showed up?

A. Five or ten minutes, I guess.

Q. What did you all talk about during that time?

A. We didn't talk.

Q. You mean you just sat there and didn't say anything to one another?

A. That is right.

[fol. 80] Q. He didn't do anything by the way of mistreating you, did he?

A. No mistreating, no.

Q. Did he hold you there?

A. He was laying on top of my body. I couldn't move.

Q. Did you ever strike out at any of these boys; fight them, or anything of that nature?

A. No, sir; I didn't.

Q. You didn't protest in any way and you didn't fight or struggle in any way?

A. I ran from that car to get away from them.

Q. How far did you run from the car?

A. As far as I could.

Q. And that was about thirty to forty feet, right?

A. I tripped over something.

Q. And you didn't get up and run any further?

A. I was out of breath.

Q. Now when the other boys got there, did they hold you, or keep you there in any way?

A. They were standing around me.

Q. They didn't beat on you, or pick on you in any way, did they, physically?

A. No, sir.

Q. Now how long had you and Foster been seated in the back seat of the car before these boys showed up that evening?

[fol. 81] A. About ten or fifteen minutes.

Q. You all had only been there ten or fifteen minutes?

A. Yes.

Q. And you were sitting in the back of the car; is that right?

A. Yes.

Q. Do you want this jury to believe that somebody else drove you all out there and then left you there, and never came back; is that right?

A. Yes, sir.

Q. And you never inquired why they didn't come back?

A. I know why they didn't come back.

Q. Why didn't they come back?

A. Because by the time they got back with the gas, the police had already arrived, due to Foster's telephone call, and they couldn't get down Batson Road. There were police cars and the ambulance there, and they couldn't get down.

Q. What do you mean?

A. My friends also arrived during that time and saw the police there and they turned around and went back. That is the reason they didn't come down.

Q. Why did your friends turn around and go back? Wouldn't it be more usual to come down and see what was going on?

[fol. 82] A. No, sir.

Q. Were they in any kind of trouble with the police themselves?

Mr. Kardy: Objection.

The Court: Sustained.

Q. You weren't present when the Johnson boy hit Foster that evening, were you?

A. No, sir.

The Court: All right.



Q. And you don't know what happened to Foster at the time, do you?

A. No, sir.

Q. And you didn't know whether he had been beat up or not, at the time these boys were in the woods with you, did you?

A. No, sir.

Q. Joyce, have you ever been convicted of a crime, yourself?

Mr. Kardy: Object.

The Court: Do you proffer to prove anything other than a juvenile offense?

Mr. Prescott: No, your Honor.

[fol. 83] The Court: It wouldn't be admissible.

Mr. Prescott: I believe I am entitled to show if she has a record.

The Court: Approach the Bench, gentlemen.

— Bench Conference —

The Court: Read the question back.

The Reporter: "Joyce, have you ever been convicted of a crime yourself?"

The Court: Objection over-ruled. Answer the question.

A. Yes, sir.

Q. What was that crime?

A. Running away from home.

Mr. Kardy: Oh, your Honor; that is no crime.

The Court: Is that all you have been convicted of?

A. Yes, sir.

The Court: That is not conviction of a crime, Joyce. [fol. 84] That is a juvenile matter. So your answer would be other than that no, that you have not been convicted of a crime; is that right?

A. That is right.

The Court: All right.

**Mr. Kardy:** Will you instruct the jury, your Honor, in that regard?

**The Court:** Well, the answer to the question is that she has not been convicted of a crime, ladies and gentlemen of the jury.

**Mr. Prescott** resumes examination of the witness.

**Q.** Joyce, do you recall telling these boys that you had had intercourse with sixteen other boys that week and they would make it an even twenty?

**Mr. Kardy:** Objection.

**The Court:** Over-ruled.

**A.** No, sir.

**Q.** You didn't say that to them, or you don't recall?

**A.** No, sir.

**The Court:** You say you don't recall or you didn't tell them that?

**A.** I did not tell them that.

**Q.** Do you recall telling these boys that you were on [fol. 85] probation and if you were caught by the police you would have to tell them that you were raped?

**A.** No, sir.

**Q.** You didn't say that, either?

**A.** No, sir.

**Q.** Joyce, how do you think these boys knew you were on probation, if you didn't tell them that?

**Mr. Kardy:** Objection.

**The Court:** Argumentative; Objection sustained.

**Q.** Had you had anything to drink on this occasion, Joyce?

**A.** No, sir.

**Q.** Do you drink on occasion?

**A.** No.

**Q.** Had Foster had anything to drink that night?

**A.** No, sir.



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Q. Hadn't you been anywhere where there was anything to drink?

A. No, sir.

Q. Joyce, have you ever had a venereal disease?

Mr. Kardy: Objection.

The Court: Objection sustained.

[fol. 86] Q. When Foster said he was going to the police, did these boys make any effort to stop him?

A. No, sir.

Q. They didn't run after him and attempt to stop him, in any way?

A. No.

Q. And they were perfectly capable of doing that, weren't they?

Mr. Kardy: Objection; it is speculative.

The Court: Objection sustained.

Mr. Prescott: I have no further questions.

#### Redirect examination.

By Mr. Kardy:

Q. Were you on probation at the time these two boys raped you?

A. No, sir.

Q. Directing your attention to this preliminary hearing; you say you were confused about names?

A. Yes, sir.

Q. Did you correct your testimony there in regard to having intercourse with three boys.

[fol. 87] A. Yes, sir.

Q. You did tell them that all three of them had intercourse with you?

A. Yes.

Q. When Stewart Foster said he was going for the police, or yelled through the woods, where were you?

A. Laying on the ground.

The Court: All right.

Q. And where was John Giles.

A. At the time he was standing to the side.

Q. Why didn't you yell back?

A. Well the whole time I was there I was afraid to do anything against them, because I was afraid they would use violence.

Q. Why didn't you scream?

A. I didn't know there was anyone there to scream to.

Q. Why didn't you hit at these boys?

A. Because I was afraid they would hit back.

Q. And why did you let them have intercourse with you?

A. Because they had chased me, and I was afraid for my life.

Mr. Kardy: No further questions.

[fol 88] Recross examination.

By Mr. Prescott:

Q. They hadn't used any violence on you up until that time, had they?

A. They had shown a great deal of violence before I started to run.

Q. They had only thrown a stone through a window of the car; isn't that right?

A. Yes.

Q. That was the only violence you saw, wasn't it?

A. That's enough.

Q. And that was the only violence they used toward you all evening; isn't that right?

A. Yes.

Q. They weren't cruel to you, were they?

A. They threatened me, and used profanity.

Q. Matter of fact, Foster used profanity, didn't he?

A. No.

Q. You don't recall the language he used towards these boys, do you?

A. No.



Q. You didn't hear him threaten that there were three other boys with him and when they came back they would take care of them if they didn't get away?

A. No.

[fol. 89] Q. And that is when they asked for a cigarette, wasn't it?

A. No.

Q. As a matter of fact, you had given him your cigarette, hadn't you? The one you were smoking?

A. Not the one I was smoking.

Q. But you did hand him a cigarette, didn't you?

A. Foster handed it to him.

Mr. Prescott: I have no further questions.

Re-redirect examination.

By Mr. Kardy:

Q. Did they throw a stone through the window?

A. Yes. They were banging on it.

Q. What did they tell Foster?

A. They told him they were going to drag his ass out of the car.

Q. Did they tell him they were going to kill him?

A. Yes.

Mr. Prescott: Objection.

The Court: Don't lead the witness.

Mr. Kardy: No further questions.

[fol. 90]

Examination by the Court.

By Judge Pugh:

Q. Why did you run when you got out of the car?

A. Because they were banging on the windows and they said they were going to drag his ass out of the car, and they said they wanted his girl and I thought maybe if I could get away why I could find some place to hide until my girl friends came up.

By Mr. Prescott:

Q. Joyce, do you ordinarily wear make-up?

A. No, sir.

Q. You weren't told to keep it off just for this occasion?

A. No, sir.

Mr. Prescott: That is all.

(The witness was excused.)

(Recess.)

3:00 P.M.

SERGEANT ALTON DUVAL, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct examination.

By Mr. Cromwell:

[fol 91] Q. Sergeant, identify yourself for the Court and the ladies and gentlemen of the jury.

A. Alton R. Duvall, Montgomery County Police, Wheaton-Glenmont Station.

Q. How long have you been a member of the Montgomery County Police, sir?

A. Sixteen years.

Q. Directing your attention to late on the 20th of July, 1961, or early in the morning of the 21st of July, 1961, did you have occasion, in your capacity as a member of the Montgomery County Police, to go to Batson Road in Montgomery County, Maryland?

A. Yes, sir.

Q. Would you tell us why you went there?

A. As a result of a radio call that there had been a rape at the end of Batson Road.

A. That is the same car; that is the rear view.



**Mr. Prescott: Objection.**

**The Court: Sustained. Ask another question.**

**Q. Approximately what time did you arrive at Batson Road?**

**A. Approximately 12:55 a.m.**

**Q. Describe exactly what you saw.**

**A. When I first arrived I saw a blue 1955 Ford at or [fol. 92] about 75 feet beyond the macadam, at the end of Batson Road. The right rear window was broken out. A few minutes later a boy came running down from the direction of the Cunningham residence.**

**Q. Where is the Cunningham residence, with reference to the place where you were?**

**A. Facing the dead end of Batson Road as I am, it would be approximately a city block to the left.**

**Q. Can you see it from there?**

**A. No, sir.**

**Q. Could you see it that night?**

**A. No, sir.**

**Q. Describe the boy, if you will.**

**A. The boy was very hysterical. He was hollering that—**

**Mr. Prescott: Objection.**

**Q. Don't repeat what he said but just describe it as best you can.**

**A. He was bleeding at the mouth; had blood all over his shirt, and he came down to where I was beside the police car and told me—**

**Mr. Prescott: Objection.**

**Q. Don't repeat what he said when he came down beside [fol. 93] the police car what, if anything did you do.**

**A. I asked him what was the trouble.**

**Q. And as the result of his answer, what did you do?**

**A. We made a search of the wooded area, approximately 100 feet in diameter from where the car was parked, the 1955 Ford, and we came upon a white girl that was lying in the woods on her back, with only a white blouse on.**

Q. Who came upon the girl first?

A. We were both together.

Q. Describe her, if you will.

A. She was in a semi-conscious state.

Mr. Prescott: I object to that your Honor.

Q. From your observation?

A. Yes, sir.

The Court: Go ahead; objection over-ruled.

Mr. Prescott: I move that go out of the record.

The Court: Motion denied.

Q. Will you state what you observe with reference to the girl?

A. She was in a semi-conscious condition.

[fol 94] Mr. Prescott: I object to that again.

The Court: Describe her, officer; what you saw that made you draw that conclusion.

A. She was lying on her back, naked except for a white blouse, when we first came upon her, this Stewart Foster and I. We picked her up and she began sobbing and we picked her up bodily and I helped her put her clothes on. We brought her back to the police car and I called for an ambulance and additional help and placed a look-out for four colored subjects; description nothing.

Q. Do you know who that girl was?

A. Yes.

Q. Who was she?

A. Her name was Joyce Roberts.

Q. Sergeant, I show you these pictures which have been admitted into evidence and ask you first, with reference to State's Exhibit #1, if you can identify the car represented in that picture?

A. Yes, sir, it is the blue 1955 Ford.

Q. I show you what has been admitted into evidence as State's Exhibit #2, and ask you whether you can identify that?

A. That is the same car; that is the rear view.



[fol. 95] Q. What is the car in front of that?

A. That is my police car.

Q. Is that where it was parked that night?

A. Yes, sir.

Q. Referring to what has been admitted as State's Exhibit #3, can you identify that picture; what that represents?

A. That is a picture of going down the hill, down Batson Road, to the entrance to the Cunningham residence, and this is the car as it was sitting off the paved portion of the road which goes down to a dead end.

Q. With reference to that car, where did you find Joyce Roberts?

A. She was approximately a hundred feet to the right of the car.

Q. I direct your attention to what has been identified as State's Exhibit #4 and ask you whether you can identify that picture?

A. That is the dirt portion of the road that goes down to the gate, which is the property of the Washington Suburban Sanitary Commission.

Q. Is that looking up from the water?

A. Yes.

Q. Can you pick out the car which was there, in which the girl had been riding?

A. I don't believe I can.

[fol. 96] Q. I show you this picture which has been admitted into evidence as State's Exhibit #5 and ask you whether you can identify it?

A. Yes; that is a picture of where we found Joyce Roberts.

Q. Is that spot in Montgomery County?

A. Yes it is, sir, at the end of Batson Road.

Mr. Cromwell: You may cross-examine him.

A. That is the same car; that is the rear view.

**Examination by the Court:**

**By Judge Pugh:**

**Q. How was this girl clothed when you picked her up?**

**A. She had on a white blouse only.**

**Q. She was bare from the waist down?**

**A. Yes, sir.**

**Q. Was she lying on her back?**

**A. Yes, sir.**

**Judge Pugh: All right. Go ahead, Mr. Prescott.**

**Cross examination.**

**By Mr. Prescott:**

**Q. Did you have a discussion with this girl about how many boys had had intercourse with her?**

**Mr. Prescott [sic]: Objection.**

**[fol. 97] The Court: Over-ruled.**

**A. No.**

**Q. You say you did not?**

**A. No, sir.**

**Q. You never did discuss that with her?**

**A. No, sir.**

**Q. Did you see Mr. Cunningham at the scene that night?**

**A. Yes I did.**

**Q. And he was right there when you brought the girl back to the car?**

**A. Yes, sir.**

**Q. Did you measure the distance to this spot where this alleged crime happened?**

**A. I did not, sir.**

**Q. You didn't measure the distance that spot was from the highway?**

**A. I did not.**



Q. And this car of Foster's was right at the end of the road, right at the end of the macadam?

A. Approximately 75 feet from the end of the macadam.

Q. In other words, he just backed down a little bit off [fol. 98] the macadam?

Mr. Cromwell: Objection.

The Court: Over-ruled.

A. I don't know how he got there. It was about 75 feet beyond the macadam.

Q. How far was it to the end of that road?

A. From where the car was sitting?

Q. Yes.

A. Approximately a city block.

Q. About how far was it from the river?

A. 500 feet, approximately. I am very familiar with that location, since I live out there.

Q. And the reason you couldn't see the Cunningham house that night was because the lights were turned off at that hour of the morning?

A. You couldn't see it on account of the trees. It is a wooded area.

Q. And do you want the ladies and gentlemen of the jury to believe that you couldn't see that house if the lights were on?

A. I don't believe you could in July, no, sir. You could in the winter time, with the leaves off of the trees.

Q. And that house isn't very far from the scene of this [fol. 99] alleged crime; is it?

A. Approximately a city block.

Q. And how far would you say that is?

A. That is a good four or five hundred feet.

Q. You have never actually measured the distance, have you?

A. No, sir.

Q. Do you recall what the weather was that night?

A. The weather was clear.

Q. Was it warm?

A. I don't remember that.

Mr. Prescott: I have no further questions.

Mr. Cromwell: That is all.

JOHN KENNEDY, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

**Direct examination.**

**By Mr. Kardy:**

Q. Officer Kennedy, tell the ladies and gentlemen of the jury your full name.

A. Detective Private John Kennedy, Montgomery [fol. 100] County Police, stationed at the Wheaton-Glenmont Station.

Q. On or about July 21, 1961, in your capacity as a member of the Montgomery County Police Department, did you have occasion to go to the Batson Road area here in Montgomery County, Maryland?

A. Yes, sir.

Q. What time did you go there?

A. In the vicinity of 2:00 A.M.

Q. When you got to the scene did you have occasion to observe a 1956 4-door automobile?

A. Yes.

Q. Did you have occasion to look into that automobile?

A. Yes.

Q. As a result of looking into the automobile, what did you observe and what, if anything, did you find?

A. I observed in the back part of the automobile quite a lot of shattered glass on the seat and on the floor, and also a very large piece of what appeared to be macadam.



Q. I show you what are already in evidence as State's Exhibits 1 and 2, and ask you if that is a fair and true representation of that automobile, as you observed it on the early morning of July 21, 1961?

A. Yes, sir; it is.

Q. I show you this piece of tar or asphalt, or macadam, [fol. 101] and ask you if you can identify that?

A. Yes; it is a rock taken from inside the 1956 Ford, from the back floor.

Q. You found that on the floor of the car?

A. Yes.

Q. What else, other than that rock, did you find on the floor of this car?

A. Shattered glass.

Q. Has this piece of material been in your possession, custody and control continuously since July 21, 1961, to the present time?

A. Yes, sir.

Q. Is it in the same condition now as it was when you found it on the 21st day of July, 1961?

A. Yes; it appears to be in the same condition.

Mr. Kardy: We offer this into evidence as State's Exhibit #6.

The Court: Any objection?

Mr. Prescott: Yes, I object to it. There is no connection of that with these three defendants at all.

The Court: Objection over-ruled. Admit it in evidence.

Q. After you left the scene there, officer, where did you [fol. 102] go?

A. After that I went to the Wheaton-Glenmont Detective Bureau for a while, where we had a conversation with John Bowie. As a result of the conversation Sergeant Harding and myself went to Brogden Road, which is off of Batson Road, where we arrested one subject. While en route back to the Wheaton-Glenmont Detective Bureau, just as we were passing the Giles residence off Batson Road, we re-

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received a radio call and went up in the car where we took James Giles into custody.

Q. Who had you arrested at the Brogden Road residence?

A. Joseph Johnson.

Q. Who was with you when you made those two arrests?

A. Detective Sergeant Harding.

Q. And where did you take the defendant, James Giles?

A. We took him to the Wheaton-Glenmont Station, where he was placed in a cell, with a police guard.

Q. From the time you arrested Johnson and the defendant James Giles, did you or any other officer in your presence make any threats, promises or inducements to either the defendant Giles or to Johnson?

A. There were none in my presence, nor did I make any.

[fol 103] Q. And you placed them in the jail at the Wheaton-Glenmont Station?

A. Yes.

Q. Did you see them later on that morning?

A. Yes.

Q. Where did you see the defendant, James Giles?

A. I later talked to him in the interrogation room.

Q. Who was present when James Giles was talked to?

A. Detective Collins, Sergeant Harding, Detective Lieutenant Whalen and myself.

Q. Did you, or any of the officers you have mentioned, make any threats, promises or inducements to the defendant James Giles, when you were in their presence at Wheaton-Glenmont Station?

A. No, sir.

Q. Did you have occasion to see James Giles thereafter?

A. At the jail.

Q. When was that?

A. That was on July 23rd in the evening hours.

Q. Who was present when you saw James Giles on the evening of the 23rd day of July, 1961?

A. Lieutenant Whalen, Detective Collins, Sergeant Harding and myself.



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[fol 104] Q. Were any threats, promises or inducements made to the defendant, James Giles, on that occasion?

A. Not in my presence, nor did I make any, sir.

Q. After the 23rd of July, 1961, to the present time, have you seen, or has any conversation taken place in your presence, or in the presence of the defendant, James Giles?

A. No, sir.

Q. Directing your attention to July 23, 1961, did you have occasion to arrest the defendant in this case, John Giles?

A. I did.

Q. Tell us the circumstances under which you arrested John Giles.

A. On July 23, 1961, Detective Thomas Thear and myself, were down in the Olney area, looking for the defendant; we had a picture of him. Also there had been a teletype placed out throughout the County and the surrounding States for the subject. While enroute back to Rockville with Detective Thear we observed the defendant standing in the gas station at the intersection of Old Baltimore Road and Georgia Avenue.

Q. That is George Smith's Esso Station at Norbeck?

A. Yes.

Q. What happened then?

A. We immediately stopped the cruiser and the defendant [fol 105] walked over to the cruiser and I asked him if he was John Giles and he said he was. I advised him he was under arrest. He was searched, placed in the cruiser and taken to the Wheaton-Glenmont Station and placed in the Detention room.

Q. From the time you arrested him up until the time he was taken to the Wheaton-Glenmont Station and placed in the Detention Room did you or your fellow officer, Officer Thear, make any threats, promises or inducements to the defendant, John Giles?

A. No, sir; we did not.

Q. While he was there with Detective Collins and Lieutenant Whalen were any threats, promises or inducements

made by you or any of the officers in your presence, to John Giles.

A. No, sir.

Q. Thereafter did you see John Giles on the 23rd of July, other than at the Wheaton-Glenmont Station?

A. At the Montgomery County jail.

Q. Who was present at the Montgomery County jail?

A. Detective Lieutenant Whalen, Detective Collins and myself.

Q. Did you or any of your fellow officers make any threats, promises or inducements to the defendant, John Giles, on the 23rd of July 1961, at the County jail, known [fol. 106] as the Montgomery County jail here in Rockville?

A. No, sir; there were none.

Mr. Kardy: Your witness.

Mr. Prescott: I have no questions.

KENNETH D. COLLINS, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct examination.

By Mr. Kardy:

Q. Officer Collins, would you state your full name, please?

A. Kenneth D. Collins, Detective Private, Montgomery County Police, stationed at the Wheaton-Glenmont Station.

Q. In your capacity as a Montgomery County detective on the morning of July 23, 1961, did you have occasion to go to Batson Road, here in Montgomery County, Maryland?

A. Yes, sir.

Q. What did you observe when you got to the Batson Road area?

A. When I arrived at the dead end of Batson Road I observed a 1955 or 1956 light blue Ford. The windows on



[fol. 107] the right side of this vehicle had been smashed open. Also on the ground by the right rear door was a spot that appeared to be blood.

Q. After your investigation of that scene, did you have a conversation with one, John Bowie?

A. Yes.

Q. As a result of that conversation, what happened?

A. As a result of a conversation with John Bowie, I had a conversation with one, James Giles.

Q. Where did that conversation take place?

A. At the interrogation room in the Wheaton-Glenmont Station.

Q. Who was present when you had a conversation with the defendant, James Giles?

A. Lieutenant Whalen, Sergeant Harding, Detective Kennedy and myself.

Q. Did you or any of your fellow officers make any threats, promises or inducements to the defendant, James Giles?

A. No, sir.

Q. Were all his statements freely and voluntarily given?

A. Yes, sir.

Q. Would you relate to the Court and to the ladies and gentlemen of the jury what, if any, conversation you had [fol. 108] with the defendant, James Giles?

A. Yes. James was asked to explain his whereabouts during the late hours of the 20th of July and the early morning hours of July 21st. He stated that he was at the river, at the dead end of Batson Road, accompanied by his brother, John Giles, and—

Mr. Prescott: If this is any kind of confession or admission, I think the jury should be instructed that this is not admissible as to John Giles.

The Court: This is an alleged statement by James Giles and is not to be considered as evidence concerning John Giles.

Mr. Kardy continues:

Q. Will you relate the statement that James Giles made?

A. Yes. He stated that he was at the river with John Giles, Joseph Johnson and John Bowie. Shortly after midnight they left the river and went to Bowie's car, which was parked on the dead end of Batson Road. All four of them got into the car. They proceeded to back out of this lane and they heard a sound and a voice saying "Can you get by?" At this time Bowie stopped his automobile and all but Bowie got out of the car. Bowie backed the car, being directed by the three other men that had gotten out. After he had backed by the parked Ford, he turned [fol. 109] around in a driveway nearby. The three other colored males walked by this parked vehicle and went over to Bowie's car and had a conversation with Bowie. As a result of this conversation, Bowie drove off alone and James and John Giles and Joseph Johnson returned to the parked Ford that was occupied by a white female, Joyce Roberts, and a white male, Stewart Foster. At this time James Giles stated that someone asked the Foster boy for a cigarette and an argument resulted. Why they were arguing, he doesn't remember, or what was said, but a car came back down the hill towards where they were and James said he could see that it was Bowie and John walked to Bowie and James and Joseph Johnson stayed by the car that was occupied by the white female and the white male. Shortly afterward John came back and Bowie drove off the second time. When John got back to the car they argued some more with the white boy in the Ford. As a result of this argument the three colored boys, John and James Giles and Joseph Johnson, stepped to the rear of the Ford and a statement was made by one of them "Let's drag his fucking ass out of there, and get some of that pussy." I asked James if he was the one that made the statement and he said he was drunk; he didn't know, it could have been. After this they went up to the car and the windows were broken out. I asked him if he broke



these windows and he said he didn't remember, that he [fol. 110] could have; that he threw some rocks at the window. Shortly after they smashed the windows out, the white male got out of the right side of the car and the white female jumped out of the left side and ran into the woods. That just after the white male got out of the car, he was knocked to the ground. I asked him if he was the one that knocked him to the ground. He said he didn't know, but he was there. Shortly after the white male had been knocked to the ground, he, along with Joseph Johnson, ran into the woods as his brother, John, had run into the woods after the white girl. He stated that he, together with Joseph Johnson, looked around the wooded area for about ten minutes for John and the girl but couldn't find them. He returned to the car where the white male was at with Joseph. On the way to the car James stated he picked up a stick and had it in his hand. When he got back to the car the Foster subject was lying on the ground, with his head towards the right rear door of the parked Ford. He stated that he stood over the top of him with the stick in his hands and the Foster boy reached in his pocket and gave him a quarter. After he had gotten this quarter from Foster, they heard a noise in the bushes where they had been. They went into the bushes, in the direction of the noise, and found his brother, John, and the white girl, Joyce Roberts. He stated then that after he found them [fol. 111] he got into an argument with his brother, John, as to who was going to be first to have intercourse. As the result of this argument the brother, John, got on top of the girl and had intercourse for approximately fifteen minutes. After he finished, Joseph Johnson got on the girl and had intercourse for about fifteen minutes. He stated after Johnson had finished he got on top of the girl and was having intercourse and was doing so for approximately fifteen minutes, when he observed a set of headlights coming down Batson Road towards the parked Ford that the boy and girl had been in. He stated that at this

time he got off the girl and went deeper in the woods and remained in the woods until approximately 8:30 that morning, at which time he went to his home up Batson Road.

Q. Is that the extent of your conversation with James Giles at the Wheaton-Glenmont Station on July 21, 1961?

A. No. I talked to him again in a line-up.

Q. When did you have that line-up, sir?

A. We had the line-up at approximately 9:30 or 9:45 A.M. on the 21st of July.

Q. How many people were in the line-up?

A. Six.

Q. Was Joyce Roberts present when you were lining them up?

A. No. Joyce Roberts was in a separate room within [fol. 112] view of the door the line-up was in.

Q. Besides James Giles, was Joseph Johnson in the line-up?

A. Yes, sir.

Q. At that first line-up, did you say there were six men in there?

A. Yes, sir.

Q. Did there come a time when Joyce Roberts came in to view the line-up?

A. Yes.

Q. What, if anything, did you say to her in the presence of these defendants?

A. The defendants were told they could pick any spot in the line-up that they chose, and they each chose a spot. Joyce Roberts came into the room and viewed the line-up.

Q. Did you, or anyone in that room, point out these two defendants to Joyce Roberts?

A. No, sir.

Q. How did she make any identification, if any?

A. She told us, in the presence of James and Joseph that each was one of the boys that had molested and had intercourse with her at the dead end of Batson Road.



Q. What did the defendant, James Giles, say at that time?

A. James Giles didn't say a word.

[fol. 113] Q. Thereafter was there another line-up at the Wheaton-Glenmont Station on the 21st of July, 1961?

A. Yes; approximately five minutes later.

Q. Prior to that time did you have any conversation with James Giles in regard to the line-up?

A. Yes, he was told we would have the second line-up and he could change positions if he desired to do so.

Q. Did he change positions?

A. Yes.

Q. Do you recall whether Joseph Johnson changed positions?

A. Yes, he did.

Q. Did there come a time when Joyce Roberts came to view that line-up?

A. Yes.

Q. What, if any, identification did she make?

A. She made the same identifications as she had on the first.

Q. On the first and/or second line-ups, did you, or any other officer in your presence point the defendant, James Giles, out to Joyce Roberts?

A. No.

Q. After the second line-up did you have any further conversation with James Giles?

A. Yes, sir.

[fol. 114] Q. Where was that conversation?

A. We had a conversation shortly after the line-up.

Q. And the conversation after the line-up was at the Wheaton-Glenmont Detective Bureau in Montgomery County?

A. Yes.

Q. Who was present when you had the conversation with James Giles after the line-ups?

A. Lieutenant Whalen and Joseph Jackson.

Q. Did you, or your fellow officer, Lieutenant Whalen, make any threats, promises or inducements to the defendant, James Giles?

A. No, sir.

Q. Were all his statements freely and voluntarily given?

A. Yes.

Q. Would you relate to the Court and the ladies and gentlemen of the jury what, if any, conversation you had with the defendant James Giles at that time.

A. Shortly after the second line-up was held I asked the defendant, James Giles, if he would take us back to the scene and show us where this rape had taken place. I also asked Johnson, in the presence of James Giles, and they both agreed that they would go back to this area and show us where this rape had taken place early that morning.

Q. What time was that when you left the Wheaton-Glenmont Station in the company of the defendants, James Giles, and Joseph Johnson?

A. Approximately 10:30 A.M.

Q. Who else was with you?

A. Lieutenant Whalen, Detective Kennedy and myself.

Q. Where did you go from the Wheaton-Glenmont Station?

A. We drove out the Colesville Road toward Spencer-ville, to Batson Road and went down to the dead end of Batson Road to the river.

Q. Did you have any conversation with the defendant, James Giles, at the scene on July 21st?

A. Yes.

Q. Did you make any threats, promises or inducements, or did any of your fellow officers make any threats, promises or inducements to the defendant, James Giles, on the trip from the Wheaton-Glenmont Station to the scene you have described?

A. No, sir.

Q. Were all his statements freely and voluntarily given at the scene?

A. Yes.



Q. Relate to the Court and the ladies and gentlemen of the jury what, if any, conversation you had with James Giles at the scene on the early morning of July 21st, 1961.

A. The defendant, James Giles, was asked if he would [fol. 116] point out to us the automobile that was involved and also the location, or the general location of where this rape had taken place.

Mr. Prescott: I object to this officer continuing to characterize this as a rape, your Honor.

(The witness continues) I asked if he would show us where this intercourse had taken place, and at this time he pointed to a light blue 1955 or 1956 Ford, parked at the dead end of Batson Road. This car had the windows broken on the right side. We walked over to this car, and he stated when he was there that evening the white boy was sitting on the right rear seat and the white girl was sitting on the left rear seat. He took us into the woods, approximately forty feet from the car and showed us a spot of grass which was laid over as if it had had some use, and he said this was the spot where the intercourse had taken place.

Q. I show you State's Exhibit #5 and I ask you if this is a true and fair representation of the spot that he pointed out to you that early morning of July 21, 1961?

A. Yes, sir.

Q. After James Giles showed you that spot, what transpired then?

A. After he had shown us this spot, we got back in the cruiser and went back to the Wheaton-Glenmont Station. [fol. 117]

Q. When you got back to the Wheaton-Glenmont station did you have any conversation with James Giles, at the Wheaton-Glenmont Station?

A. No, sir; upon our arrival back at the station, the warrants were read to James Giles and Joseph Johnson.

Q. Where was James Giles taken from the Wheaton-Glenmont Station?

A. I left him at the station.

Q. Thereafter on that day did you have any other conversation with the defendant, James Giles?

A. That day, no, sir.

Q. Directing your attention to the day of July 23, 1961, did you have any conversation with the defendant, John Giles?

A. Yes.

Q. Where did that take place?

A. At the Wheaton-Glenmont station.

Q. Who was present when you had that conversation?

A. Sergeant Harding and Detective Kennedy.

Q. Did you or anyone in your presence make any threats, promises or inducements to the defendant, John Giles?

A. No.

Q. Were all his statements freely and voluntarily given? [fol. 118]

A. Yes.

Q. Relate to the Court and the ladies and gentlemen of the jury what conversation you had with John Giles on July 23, 1961, at the Wheaton-Glenmont Station here in Montgomery County, Maryland.

A. I asked John Giles to explain to me his whereabouts on the night of the 20th and the early morning hours of the 21st, of July, 1961. He stated he had been down to the river with his brother, James, Joseph Johnson and John Bowie, and when they were in the process of backing out of this lane they heard a horn sounded and a voice saying "Can you get by?" They got out and Bowie backed his automobile by. There came a time when Bowie left and he, in company with his brother and Joseph Johnson, went over to this parked automobile which was occupied by a white male and a white female. He stated one of the boys with him asked the boy in the car for a cigarette and an argument resulted. While they were arguing a car came down the hill and he could see it was Bowie's car and he went over and talked with Bowie and then Bowie left and he came back and joined his brother and Joseph Johnson. They argued—he didn't know what about—and he said he stepped to the rear of the car with them and they talked

[fol. 122] and John Giles was told he could change places



and then some of the windows were broken out. He was asked if he broke some of the windows and he said he didn't know. He stated after the windows were broken [fol. 119] the white male got out of the right side of the car, and the white female jumped out of the left side and ran into the woods. He stated he immediately chased her into the wooded area and found her laying on the grass. He said he stayed with her for approximately fifteen minutes and he heard his brother, James, and Joseph Johnson, calling to him and he would not answer. He said he was there for approximately fifteen minutes when they came back into the woods and found him with the girl. He stated that at this time he left the scene and didn't have anything to do with the girl, and he stayed away from that area and away from home all day Saturday and all day Sunday, until approximately 3:00 P.M. on Sunday, when he was picked up. I asked him why he didn't go home that night and he said he was afraid the police wouldn't believe his story.

Q. Was that the extent of your conversation, on July 23, 1961, at the Wheaton-Glenmont Station, with the defendant, John Giles?

A. Yes, sir.

Q. Did you have any conversation with him further, at the Wheaton-Glenmont Station on the 23rd of July, 1961?

A. No, sir.

Q. Did there come a time later when you had conversation with John Giles?

A. Yes, sir.

[fol. 120] Q. Where was that?

A. That was that same evening, at approximately 9:00 P.M. at the County Detention Building in Rockville.

Q. Who was present when you had that conversation?

A. Lieutenant Whalen and James Giles.

Q. Did you make any threats, promises or inducements, or did Lieutenant Whalen make any threats, promises or inducements to John Giles at that time, at the jail?

A. No, sir.

Q. Were his statements freely and voluntarily given at that time?

A. Yes.

Q. Would you relate the conversation you had with John Giles, at that time, in the presence of James Giles?

A. Yes, sir. We asked John if he had anything else he would like to tell us and he said "No" and so in his presence we brought his brother, James, into the room and asked James if his brother, John, was standing with him beside the car when the statement was made "Let's get his fucking ass out of there, and take some pussy" and he said he was, and the brother, John, did not deny this.

Q. Was that the extent of your conversation at that time?

A. Yes, sir.

Q. Did there come a time when there was a line-up in [fol. 121] which the defendant, John Giles, appeared?

A. Yes.

Q. Where was that and at what time?

A. Five minutes after our conversation, which was a little after 9:00 P.M. This line-up was held at the County Detention Building, Rockville, Maryland.

Q. On July 23, 1961?

A. Yes.

Q. How many people were in the line-up?

A. The defendant John Giles and five inmates from the County jail.

Q. Did Joyce Roberts view that line-up?

A. Yes; we had two line-ups; one right after the other.

Q. What identification did she make in the first line-up?

A. She pointed to John Giles and that was all.

Q. Did you, or any other officer, point out the defendant to her, or make any remarks to her prior to her identifying John Giles?

A. No, sir.

Q. In regard to the second line-up at the same place, a few minutes later, what, if any, identification did Joyce Roberts make in that line-up?

A. The second line-up was shortly after and the defendant, John Giles, was told he could change places



if he desired to do so. He elected to remain in the spot he had chosen in the first line-up. Some of the men had switched positions. She was asked if she knew anybody in this line-up and she walked over and pointed to the defendant, John Giles, and stated to us, in his presence, that he was the first colored male that had intercourse with her on the night or the early morning hours of July 21st, in the wooded area at the dead end of Batson Road.

Q. In regard to the line-ups you have mentioned, on July 21st, 1961, at the Wheaton-Glenmont Station, and the line-ups at the Montgomery County jail, were all the subjects colored, or white, or could you describe with particularity how they were dressed?

A. The line-up at the Wheaton-Glenmont Station were all colored. All six of—of the six, four of these colored males were brought in off the street and all of them resembled these boys in build and height and weight, as close as we could get them. The line-up at the County jail was held with inmates from the jail and all were dressed in jail clothing, blue coats and blue pants, and we tried to get as close as possible the same build.

Mr. Kardy: Your witness.

### Cross examination

[fol. 123]

By Mr. Prescott:

Q. Officer, at the time this boy was confronted here at the Detention Building by his brother, didn't he shake his head when his brother made that statement?

A. No, sir; John didn't shake his head at that time.

Q. He didn't shake his head?

A. No, sir; he did not.

Q. And this happened back in July, didn't it, officer?

A. Yes, sir.

Q. And you remember this statement so clearly, just like it happened yesterday; is that right?

Mr. Kardy: Objection.

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**The Court: Over-ruled.**

**A. Yes, sir; I do.**

**Q. How do you recall so vividly just exactly what these boys told you?**

**A. I investigated the case, and I wrote up the report.**

**Q. Did you refer to the report?**

**A. Yes.**

**Q. When?**

**A. Last night.**

**Q. And again just before you came in here today?**

**[fol. 124] A. No.**

**Q. Did you tell the jury everything that these boys had told you in all the conversations you had with them?**

**A. No, sir.**

**Q. What didn't you tell the jury?**

**A. The defendant, James Giles, stated that he had made up his mind to take some pussy, but when he got into the woods, he didn't have to take it.**

**Q. Why didn't he have to take it?**

**A. He said it was there for his asking, and the girl did not resist.**

**Q. Why didn't you tell the jury that? Don't you know you are supposed to tell the entire statement?**

**A. Yes, sir.**

**Q. Why didn't you tell them that? Are you trying to prejudice this case?**

**A. No, sir; definitely not.**

**Q. And yet you left out the most important part of his statement; isn't that correct?**

**Mr. Kardy: Objection.**

**The Court: Sustained.**

**Q. He told you that this girl volunteered, and he didn't have to take it; isn't that right?**

**[fol. 125] A. Yes, sir; that's what he said.**

**Q. Did he tell you this girl disrobed herself?**

**A. No, sir; he did not. He didn't remember that.**

**Q. He didn't remember that, but he remembered everything else; is that right.**



A. You are speaking of the defendant, James Giles?

Q. Yes.

A. Yes, sir.

Q. John told you he didn't have intercourse with her, didn't he?

A. Yes, sir; he did.

Q. Did you have a conversation with the girl, herself?

A. Yes, sir.

Q. And didn't she tell the police when she came there that there was only two of these boys that had intercourse with her?

A. No, sir.

Q. She didn't tell you that at the Wheaton-Glenmont Station?

A. No, sir. I questioned the girl at the station and she said all three of the boys had intercourse with her.

Q. Who gave out the report to the newspapers of this case; was that Lieutenant Whalen?

A. I don't know, sir.

[fol. 126] Q. You didn't tell the newspapers that only two of these boys had attacked her, and that was what the girl had told you?

A. No, sir; I didn't talk to the newspaper.

Q. And the girl didn't tell you that?

A. No, she did not.

Q. If I told you that the girl said here today that she told the police that only two of the men had attacked her, would you say that was not true?

A. She told me on the morning I questioned her that three colored males had had intercourse with her.

Q. And she was mistaken when she told this jury that—

Mr. Kardy: Objection.

The Court: That is not proper. Just ask the witness what he knows. Objection sustained.

Mr. Prescott: If it please the Court, I believe I have a right to ask it—

The Court: Objection sustained.

Q. In other words that girl was lying then when she said that she had told the police that only two of the men had attacked her?

[fol. 127] Mr. Kardy: Objection.

The Court: Sustained.

Mr. Prescott: I have no further questions.

Redirect examination.

By Mr. Kardy:

Q. When you said you didn't recall James Giles telling you at the Wheaton-Glenmont Station that he didn't have to take any pussy, did you ask him why he didn't have to take it?

A. Yes.

Q. What did you say to him?

A. I asked him what he would have done if he had been in that position?

Q. And what was his reply?

A. He said "You mean if I was a girl?" and I said "Yes" and he said "Cooperate, I guess."

Mr. Prescott: Objection.

The Court: Overruled.

Q. Why did you fail to tell this jury the whole statement?

[fol. 128] A. I didn't mean to leave it out. I am not prejudiced. I just forgot that part of the statement.

Q. But you didn't leave anything else out, did you?

A. No. That is just something I happened to leave out and I am sorry.

Mr. Kardy: No further questions.

Mr. Prescott: No further questions.

Mr. Kardy: The State rests.

Mr. Prescott: Can we approach the Bench, if it please the Court?

(Bench Conference.)



# **MOTION FOR DIRECTED VERDICT AND DENIAL THEREOF**

**Mr. Prescott:** I move for a directed verdict on behalf of both defendants at this time, on all counts of the indictment.

**The Court:** The motion is denied.

[fol. 129] **Reporter's Certificate (omitted in printing).**

[fol. 130] **SERGEANT STANLEY HARDING**, a witness of lawful age, called for examination by counsel for the defense, and having first been duly sworn, according to law, was examined and testified as follows, upon

## **Direct examination.**

**By Mr. Prescott:**

**Q.** State your full name.

**A.** Detective Sergeant Stanley Harding.

**Q.** Where are you employed?

**A.** At the Wheaton-Glenmont Station.

**Q.** How long have you been on the Montgomery County Police force as a detective?

**A.** Twenty years this month.

**Q.** Did you have occasion to interview the complaining witness in this case, Joyce Carol Roberts?

**A.** A very little bit.

**Q.** And when did you see her?

**A.** I think it was on the 21st.

**Q.** 21st of July, 1961?

**A.** Yes, sir.

**Q.** Where did you see her?

**A.** At the Glenmont station.

**Q.** At that time did she tell you that only two boys had attacked her on July 20, 1961?

**A.** No, sir.

[fol. 131] **Q.** You don't recall her having made that statement to you?

A. I talked to her very little at that time.

Q. Did you talk to Mr. and Mrs. Giles, the mother and father of these boys?

A. No.

Q. You have never talked to them at all?

A. I talked to James when I picked him up.

Q. You didn't talk to Mr. and Mrs. Giles?

A. No.

Mr. Prescott: I have nothing further.

Mr. Kardy: No questions.

**LIEUTENANT LLOYD M. WHALEN**, a witness of lawful age, called for examination by counsel for the defense, and having first been duly sworn, according to law, was examined and testified as follows, upon

**Direct examination.**

**By Mr. Prescott:**

Q. State your name.

A. Lloyd M. Whalen.

Q. Where are you employed?

A. Montgomery County Police Department.

[fol. 132] Q. In what capacity?

A. Detective Lieutenant.

Q. How long have you been employed in that capacity?

A. For about a year and forty-five days.

Q. Did you have occasion to interview the plaintiff in this case, Joyce Carol Roberts?

A. Yes.

Q. When did that take place?

A. On the morning of July 21st.

Q. Where was that?

A. At the Wheaton-Glenmont station.

Q. At that time did she tell you that only two of these colored boys had attacked her on the night before?



A. No, sir.

Q. And I ask you if you gave out a report as to what happened to the newspaper that day?

A. No, sir.

Q. You didn't report to the newspaper?

A. No, sir.

Q. Do you know who did report to the newspaper?

A. What do you mean by "report to the newspaper." Break that down a little bit for me.

Q. I might say the newspaper quotes you—

Mr. Kardy: I object to any newspaper quotes or any [fol. 133] newspaper articles. It has nothing to do with this case. It is absolutely immaterial and irrelevant and I move that it be stricken.

The Court: Sustained.

Q. And you deny that Joyce told you that only two of these boys had intercourse with her on that evening?

A. That is right.

Q. You don't believe Joyce was telling the truth when she told the jury that?

A. She testified—

Mr. Kardy: Objection.

The Court: Sustained.

Q. Was Joyce mistaken when she told the ladies and gentlemen of the jury that?

Mr. Kardy: Objection.

The Court: Sustained.

Mr. Prescott: That is all.

Cross examination.

By Mr. Kardy:

[fol. 134] Q. Lieutenant, how long have you been on the Montgomery County Police Force?

A. Eighteen years.

**Mr. Kardy:** That is all.

**The Court:** You may step down.

**JOHN GILES**, a witness of lawful age, called for examination by counsel for the defense, and having first been duly sworn, according to law, was examined and testified as follows, upon

**Direct examination.**

**By Mr. Prescott:**

**Q.** State your full name?

**A.** John Giles.

**Q.** Where do you live?

**A.** Batson Road, Spencerville, Maryland.

**Q.** How long have you lived there?

**A.** Ever since I can remember.

**Q.** How old are you?

**A.** Twenty-two.

**Q.** How far did you go in school?

**A.** To the eighth grade.

**Q.** With whom do you live there on Batson Road in Spencerville?

**[fol. 135] A.** My mother and father.

**Q.** Do you have any brothers and sisters?

**A.** Four sisters and two brothers.

**Q.** What is your occupation?

**A.** Landscaping.

**Q.** For whom do you work?

**A.** Well, when I was arrested, I was working for a plumber.

**Q.** Who was that?

**A.** William B. Giles.

**Q.** Have you been working steady?

**A.** Yes.

**Q.** On July 20, 1961, tell the ladies and gentlemen of the jury where you were at about 1:30 in the evening.

**A.** My brother, James, and Johnson broke the window.



**A. Working.**

**Q. I mean 1:30 at night.**

**A. On July 20th and 21st we had left my house and started to take—**

**Q. (interrupting the witness) Where had you gone on July 20th?**

**A. Down to the river to go fishing and swimming.**

**Q. What time did you go down to the river?**

**A. About 5:30 or 6:00 o'clock.**

**Q. After you got home from work?**

**A. Yes.**

**[fol. 136] Q. What had you gone to the river for?**

**A. Just to swim.**

**Q. How long did you stay at the river?**

**A. About an hour and we saw a lot of big fish down there and we decided to go fishing.**

**Q. And then you went back to the river?**

**A. Yes.**

**Q. And what time did you get back to the river?**

**A. I'd say about 9:00 o'clock.**

**Q. What time did you get through fishing that evening?**

**A. I'd say about 12:30 or 1:00 o'clock.**

**Q. And with whom had you gone fishing?**

**A. Joseph Johnson, James Giles and John Bowie, and myself.**

**Q. How had you gone?**

**A. In Bowie's car.**

**Q. What kind of a car was that?**

**A. Mercury, that's all I know.**

**Q. Where did you park that car?**

**A. Right up to the gate, at the end of Batson Road, just before it joins the river.**

**Q. That is the gate right at the Washington Suburban Sanitary Commission's property?**

**A. Yes.**

**[fol. 137] Q. How was the car facing when you parked it?**

**A. Straight to the gate, facing the river.**

Q. And you say you came back about 12:00 or 12:30 that evening?

A. Yes.

Q. What did you boys do when you got back there?

A. Well we started to go home and seen this car parked behind us and we asked the boy would he move the car; there was a lot of mud on the side, and the boy hollered and asked could we get by all right.

Q. And you were able to get by all right?

A. We had to push the car over.

Q. After you got by the car, then what did you do?

A. We started to go and we decided to walk across the field. It was just as short, and we could get home almost as soon as we could in the car.

Q. Did you walk home?

A. No; we never did go home.

Q. Tell the ladies and gentlemen of the jury just what happened.

A. Well, when we come back past the car this boy, Stewart Lee Foster—somebody asked him for a cigarette, or something.

Q. What did he say?

A. At first he said "You black son-of-a-bitch; get away [fol. 138] from this car."

Q. Then what happened?

A. We told him he didn't have no cause to talk like that, and he kept right on.

Q. What else did he say to you?

A. He said he had three more boys with him and when they come back they were really going to get me, or something like that.

Q. What did he call you all?

A. Called us a "black mother fucker" first.

Q. What did you all do as a result of that?

A. Well first he said, somebody said "If you say that again" they were going to snatch him out of the car, and he reached down like that (indicating) like he was going to get something from the back of the seat and that is when my brother, James, and Johnson broke the window.



Q. Where was Foster seated in the car?

A. On the right hand side, in the back.

Q. Who was in the car with him?

A. At that time I didn't know anybody was with him. I found out later it was Joyce Roberts.

Q. And you say Johnson and your brother threw rocks at the car?

A. When he leaned down like he had a gun on the back seat, or something.

[fol. 139] Q. What did you do at that point?

A. I just backed off.

Q. What did the occupants of the car do, as the result of seeing these stones thrown in there?

A. After we threw two stones in, there somebody jumped out of the car and was running through the woods and the Foster boy come out of the other side and I was walking down through that path, slanting like this.

Q. Does that slant along that fence line of the Sanitary Commission?

A. Sort of, at the spot where the girl was.

Q. What happened when you got up there?

A. That is when this girl called me over there and said she was on a year's probation and she didn't want to get into any trouble, and would I help her get away.

Q. What did you do?

A. I said yes I guess so.

Q. Did you help her get away from there?

A. I started to.

Q. What happened?

A. We started to move and she said she didn't want anybody to know we were up there. She said if I got away from that spot she would have sexual intercourse with me by myself, but she didn't want my brother and Johnson to know she was up there.

[fol. 140] Q. Did you have intercourse with her on that occasion?

A. I did not.

Q. Did you have intercourse with her on that occasion?

Q. Why didn't you?

A. Because she said my brother and Johnson was calling me and I didn't answer, and the girl said "You can call them, if you want to" and I said "No" and we stayed up there for fifteen or twenty more minutes and my brother and Johnson came walking up the path and she said "Oh, they are going to find you sooner or later" and called them over and she said "Seeing as you tried to help me get away from here, you can be first."

Q. She said that to you?

A. She did.

Q. What threats did you make to this girl?

A. None whatsoever.

Q. Did you strike her?

A. No; I never even touched her.

Q. Did you have any weapons with you, or anything of that nature?

A. None whatsoever.

Q. Did this girl ask you not to have intercourse with her?

A. No, she did not. She insisted on it.

Q. And even after she insisted on it, you say you didn't have intercourse with her?

[fol. 141] A. I did not.

Q. What did you do while the others had intercourse with her?

A. She said I could be first and after that she said something about she was on probation and she couldn't afford to be caught in the woods up there, not even with her boy friend, and she said if I wanted to have intercourse with her, she said I could, and I told her no, and she said if she was caught up there she would have to charge rape.

Q. Did you leave?

A. Yes.

Q. Where did you go?

A. I walked over towards the river for about ten minutes and then I came back to get my brother.

Q. When you came back to get your brother what was going on?



A. I couldn't actually see; it was real dark.

Q. How dark was it down there that night?

A. In the woods it was real dark in there.

Q. By Mr. Prescott:

I have no further questions.

Cross examination.

By Mr. Kardy:

Q. Have you ever been convicted of a crime?

A. Yes.

[fol 142] Q. When and where were you convicted?

A. Rockville Court House.

Q. Here in the Circuit Court for Montgomery County?

A. Yes.

Q. What was the crime you were convicted of?

A. Housebreaking.

Q. And were you sentenced to jail?

A. I was.

Q. What jail were you sentenced to?

A. Rockville; the one upstairs.

Q. Did you go to the House of Correction?

A. No, I did not.

Q. Did you know this girl before, Joyce Carol Roberts?

A. I had never seen her before.

Q. You never saw her before in your life?

A. No.

Q. And she never saw you before in her life?

A. I don't think so.

Q. Didn't John Bowie tell you all to leave?

A. He just asked if we were going up the road.

Q. He wanted you to go with him, didn't he?

A. He just said "come on."

Q. When John Bowie's car went by this car here that

was stalled and out of gas, with the two people in it—when

going out

Bowie's car went by this car he stopped and asked you all to [fol. 143] go with him, didn't he?

A. He didn't stop until he got up the road.

Q. He said "Come on, boys, and go with me" didn't he?

A. He didn't say it like that.

Q. What did he say?

A. He asked if we wanted to go dancing and we said "No, we got to work tomorrow."

Q. And he backed down again, didn't he?

A. Yes.

Q. And you went up and talked to him, didn't you?

A. He said something about he was sleepy and he wanted to go over to Mt. Zion.

Q. And he asked you to go with him again, didn't he?

A. Yes.

Q. And you refused?

A. We told him we could get home in a few minutes.

Q. And then you and your brother, James, and Joseph Johnson went back to this car that was parked and out of gas, didn't you?

A. We went back past the car.

Q. That would take you back down to the river, wouldn't it?

A. No.

Q. Would it take you home?

A. Yes.

[fol. 144] Q. Why didn't you go home?

A. That is where we were going.

Q. All right. Why didn't you go home?

A. That is what we were going to do, until we asked for a cigarette, and that is when all this argument started.

Q. Who asked for the cigarette?

A. I don't know.

Q. You were there, weren't you?

A. Yes.

Q. But you don't know who asked for the cigarette?

A. No. I know it wasn't me.

A. I don't know.



Q. How close were you to your brother, James, and Johnson?

A. We were all standing back.

Q. You were together, weren't you?

A. No.

Q. How far apart were you?

A. About the distance we are now.

Q. You mean your brother was that far away from you?

A. We were in back of the car.

Q. Who put the first rock through the window?

A. I don't know.

Q. You were there?

A. Yes.

Q. And you don't know who did it?

[fol. 145] A. No.

Q. Were they little rocks or stones?

A. I don't know.

Q. Did anybody crash this rock through the window? (showing the witness the large rock admitted in evidence).

A. I don't know. Not to my knowledge.

Q. Did you hear the window break?

A. Yes, I heard glass break. I don't think that was thrown through there.

Q. What kind was thrown through there?

A. There wasn't any that big laying around.

Q. How far were they from the car window when the little rocks were thrown?

A. I don't know that either.

Q. You were there?

A. Yes.

Q. How far away were you from the car when they were pushing the windows in?

A. I guess twenty feet; or fifteen.

Q. So if anybody was breaking windows, it had to be your brother, didn't it?

A. Him and Johnson; but I never did throw any stones. I thought that if I put fingerprints on anything—

Q. And that is why you stayed away from the car, isn't it?

[fol. 146] A. Yes.

Q. Did you tell your brother and Johnson to stop breaking in the car?

A. They weren't breaking in the car.

Q. What were they doing?

A. They were trying to stop the boy from shooting them.

Q. He was trying to shoot them?

A. He reached down for something; we didn't know what it was.

Q. How close were you to the car window when he reached down?

A. About twenty feet.

Q. I show you this picture here, State's Exhibit #2 and I ask you to point out to the jury, and hold it up so they can see it, and tell them how far away from that car you were when you saw Stewart Foster reach down on the floor boards of the car?

A. He was sitting in the right hand corner and I was directly behind the car and I could see his head bob back and forth like this.

Q. And that is all you saw?

A. I saw his head go down out of sight.

Q. Did you see him go out of sight?

A. His head bobbed back and forth and he leaned down.

[fol. 147] Q. Where was your brother, James?

A. He was a little closer to the car than I was.

Q. Point out to the ladies and gentlemen of the jury on this picture where your brother James was.

A. I don't know exactly.

Q. You were there?

A. Yes.

Q. Well point out on that picture where your brother James was.

A. He could have been in any number of spots.

Q. Well where was he, do you know?

A. I don't know.



Q And where was Johnson?  
 A I don't know.  
 Q You don't know where he was either?  
 A No.  
 Q Did you hear the glass break?  
 A Yes.  
 Q Did anybody say anything about a gun?  
 A The Foster boy.  
 Q What did Foster say?  
 A He said something about he had a gun in there and he was going to shoot somebody.  
 Q Did that scare you?  
 A Sort of.  
 [fol. 148] Q Did you run?  
 A No.  
 Q Did your brother James run?  
 A No.  
 Q You mean a man in that car, with a gun, said he was going to shoot you and you all just stood there?  
 A That is why he got the windows broke out.  
 Q And then they all started throwing stones at the car, when the man in the car said he had a gun?  
 A Yes.  
 Q You saw the girl in the car, didn't you?  
 A I didn't until I seen her in the woods.  
 Q You told the police you saw the girl in the car?  
 A I didn't tell the police nothing.  
 Q You heard John Bowie testify that he was driving past the car, and he saw a girl in there; didn't you?  
 A That's him; I didn't see nothing.  
 Q You went by this car with Bowie's car, didn't you?  
 A More or less over here.  
 Q How far away from that car were you?  
 A You mean when I went by?  
 Q Yes.  
 A I don't remember.  
 Q You saw the boy in the car when you went by, didn't you?

[fol. 149] A. Yes; that's the onliest person I saw in the car.

Q. Didn't you go up the road with Bowie?

A. Yes when we went by there is a path a little below the bushes.

Q. And then you saw the boy in the car?

A. We had asked the boy for a cigarette when we was coming back down.

Q. When you asked him for a cigarette, the windows were closed in the car; weren't they?

A. I don't remember that. I remember when he started all that cursing he started winding up the windows.

Q. Did you ask him for a cigarette?

A. No.

Q. But you went past the car?

A. Yes.

Q. Did you stop there to ask him for a cigarette?

A. I didn't speak to him.

Q. Did James, your brother speak to him.

A. I don't know.

Q. And then you stopped behind the car; how far from the car did you stop?

A. About ten feet from where the car was.

Q. And you saw his head bobbing and weaving and go down, and you still didn't see any girl?

[fol. 150] A. I had come up closer then.

Q. Is that when you saw the girl?

A. I didn't never see the girl.

Q. There was a girl in the back seat, wasn't there?

A. Yes.

Q. But you didn't see her?

A. No.

Q. James saw her and John Bowie saw her and Johnson saw her, but you didn't see her?

A. James didn't see her.

Q. Did they get out of that car?

A. Yes.



Q. Where did they go? A. Yes; that's what I did. [fol. 149]  
 A. Somebody jumped out the left side and ran into the woods.

Q. Where were you standing when that left back door opened?

A. About ten feet over in the other path.

Q. Somebody ran into the woods?

A. Yes.

Q. What did you do?

A. Just started through the path and that is when this girl called me.

Q. Didn't you run into the woods? [fol. 151] A. No.

Q. Didn't you tell the police you ran into the woods?

A. I didn't tell the detectives nothing.

Q. And when you saw this door open, you started to walk away?

A. That is right.

Q. Were you on the same side of the car that the door opened?

A. No; I was, more or less, back.

Q. Why would you go into the woods when the girl went into the woods?

A. I went over into the path.

Q. Is that where you found the girl?

A. I didn't find her; she found me.

Q. And she said "Come on over here?"

A. She asked me to help her.

Q. Did she say she needed help?

A. Yes.

Q. Why did she say she needed help?

A. She said she was on a year's probation and she didn't want to get in any trouble, and also she said she had had sexual intercourse with about sixteen or seventeen boys that week and she said two or three more wouldn't make no difference.

Q. You saw the boy in the car when you went out?

Q. Now, here we are, about 1:30 in the morning, over [fol. 152] there on Batson Road and your brother, James, and Johnson pushing in the windows, and it is your testimony that you just walked down the path and you met a girl you had never seen before and she had never seen you before, and the first words out of her mouth were "I am on a year's probation and I don't want to get in any trouble, and I have had sexual intercourse with sixteen or seventeen boys this week anyway and two or three more won't make any difference."

A. That is right.

Q. Did she insist that you have intercourse with her?

A. She did.

Q. She was begging you to have it?

A. I wouldn't put it that way, but she insisted.

Q. How did she insist.

A. She said "If you will help me; you can be first" and she started laughing.

Q. How did you help her?

A. When she asked me to lead her away from that spot.

Q. Did you lead her away?

A. We started and made some noise and then we sat down.

Q. What happened then?

A. We just started talking.

Q. What did you talk about?

A. Mostly her. She was doing all the talking.

[fol. 153] Q. What did she say to you about her probation. Did she bring up her probation again?

A. Yes.

Q. That's all she talked about, was her probation; was it?

A. She said she didn't want to get in any trouble.

Q. What did you say to her when she asked you to help her?

A. I said "I am on probation myself; I don't want to get in any trouble, either; I will show you where the road is."



Q. Did you show her where the road was? Now, how?

A. I would've but I couldn't. [fel. 153]

Q. Why couldn't you?

A. We made some noise when we moved and she didn't want anybody to hear us, so we sat back down.

Q. So you were on probation and she was on probation and so you just sat down and talked?

A. Yes.

Q. What did you talk about when you two probationers sat down?

A. I didn't say anything. She was doing all the talking.

Q. And back at the car; what was going on back there, if you know?

[fel. 154] A. I don't know.

Q. Did you hear any noises back there?

A. No.

Q. Quiet; was it?

A. Yes, to my knowledge, I never heard a sound.

Q. I guess when you all finished fishing—you were fishing that night, weren't you?

A. Yes.

Q. Did you have a fishing pole?

A. Yes, and fish, too.

Q. Did you put the fish in Bowie's car?

A. In the trunk.

Q. Is that where you put the fishing poles, too?

A. Yes.

Q. You put all the fishing poles in there?

A. I wouldn't say that.

Q. You weren't carrying a pole, were you?

A. No.

Q. No one was carrying a pole, were they?

A. I couldn't say that.

Q. How long were you in this woods, with that probationer, when somebody found you?

A. About ten minutes, may be longer.

Q. Fifteen minutes?

A. It could have been one of them. Q. How do you know no one there?  
[fol. 155] Q. You were sitting down?

A. We were.

Q. And then what happened, after you were sitting down?

A. Well my brother and Johnson started through the path and when they got within about ten feet of us the girl called them over.

Q. What did she say to them?

A. She said "They are looking for you; they are going to find us sooner or later; I may just as well call them."

Q. What did she say to them?

A. She said "I know what you boys like" and started taking her clothes off.

Q. Your brother had never seen her before, had he?

A. I don't think so.

Q. She didn't know Joseph Johnson, did she?

A. No.

Q. And didn't know you?

A. No.

Q. Is that when she begged you to have intercourse with her?

A. She didn't beg us.

Q. She just wanted you to?

A. Yes; I will put it that way.

Q. Who was the first one that had intercourse with her?

A. I don't know.

[fol. 156] Q. You were there?

A. Yes, but I didn't have intercourse with her.

Q. Who was the first one that had intercourse with her?

A. I don't know. After I said "I don't want to get in any trouble," I just left.

Q. You didn't help that girl at all, did you?

A. I tried to help her.

Q. How did you try to help her?

A. She said she wanted to get away from there and I told her I would show her where the road was. No one tried to hold her and no one threatened her.



Q. How do you know no one threatened her?

A. I didn't hear anybody threaten her.

Q. You weren't there when your brother had intercourse with her, were you?

A. No.

Q. Where did you go when you left?

A. Down toward the river and got to thinking.

Q. What were you thinking about?

A. About that girl and the boy mostly, the way they were acting.

Q. And that made you come back out?

A. Yes.

Q. When you came back what did you see?

A. I didn't see anything. I just called my brother and [fol. 157] five minutes after that is when the police cars came.

Q. When you got back your brother was still there, wasn't he?

A. Yes.

Q. And Joseph Johnson was still there?

A. I don't know about Johnson.

Q. What did you say to your brother?

A. I just told him to come on.

Q. What did your brother say?

A. He didn't say nothing, so I left myself.

Q. Did you run?

A. No; I didn't run.

Q. You walked?

A. I was a good ways away from there when the police started coming.

Q. How did you know the police were coming?

A. I seen the lights and heard the siren.

Q. Didn't you hear Stewart Foster say he was going to call the police?

A. I did.

Q. Where were you when you heard him say he was going to call the police?

A. Down near the river.

Q. All by yourself?

A. Yes.

[fol. 158] Q. Fishing?

A. No, I wasn't fishing.

Q. Where did you go after you left?

A. After I left where?

Q. Down by the river.

A. Oh, you mean after the police came?

Q. Yes.

A. I went to Norbeck.

Q. After the police came you just walked away?

A. Yes.

Q. You didn't run?

A. No.

Q. And walked down to the river?

A. Yes.

Q. And it was two days later when the police picked you up, wasn't it?

A. They didn't pick me up. I gave myself up.

Q. It was two days later, wasn't it?

A. Well I just couldn't see going to jail for nothing.

Q. They picked you up at Norbeck on July 23, 1961. What did you do between July 21st and July 23rd?

A. Stayed in the woods most of the time.

Q. Well, if you didn't do anything, why didn't you give yourself up when the police first came to the scene?

[fol. 159] A. I didn't want any trouble and I was on probation and when I found what the charges were, I gave myself up.

Q. Did you hear them talking about they were going to pull that boy's ass out of there?

A. No, only when that boy started cursing.

Q. In other words, Stewart Foster was doing all the cursing and you and your brother and Johnson said "You don't have any cause to say that"—Who said that?

A. Either my brother or Johnson.



Q. And Foster was cursing all the time?

A. I wouldn't say all the time; he said words.

Q. Three of you boys outside the car, and he was inside, with a girl, but he was doing all the cursing?

A. Yes.

Q. Did you hear your brother, James, curse at all?

A. No.

Q. Did you hear Johnson curse at all?

A. No.

Q. If they had cursed there at the car, you would have heard them, wouldn't you?

A. I guess so.

Q. So they didn't curse?

A. If they did it was very low.

Q. And you don't know who threw the brick in the window?

[fol. 160] A. No.

Q. When you got back behind the car, with the three of them, did you hear them say, in your presence, "We are going to get some pussy?"

A. That never was said.

Q. Do you recall the conversation in the Montgomery County jail, when your brother was there and he told Lieutenant Whalen and Detective Collins that you knew you were going to get some pussy?

A. He didn't say that.

Q. What did he say?

A. Detective Collins asked him "Were you going to take some pussy" and he said he wasn't and Detective Whalen asked him if he cursed this man and he said he might, and that is all that was said on that occasion.

Q. Your brother wasn't drunk on that occasion, was he?

A. No.

Q. And you weren't drunk, were you?

A. No.

Q. Now this girl picked you out of a line-up, didn't she?

A. Yes, with the detectives to help.

Q. Tell Judge Pugh—look right at that jury, and tell those ladies and gentlemen of the jury how the Mont-[fol 161] gomery County detectives helped Joyce Roberts pick you out of a line-up.

A. They said they were going to get six men about my size; every one of them was larger, shorter or taller and number one, they called my name right off, and I think the girl should know my name by then.

Q. You were in the line-up and they called out your name, and you raised up your hand!

A. No; they said "John Giles Number One" and she said "That is the man right there."

Q. And they had a second line-up and the detectives picked you out for her then?

A. I was standing in the same place and they went over and told the girl my name.

Mr. Kardy: No further questions.

The Court: Any Re-direct?

Redirect examination.

By Mr. Prescott:

Q. Did the police take your clothes away from you, John?

A. They did.

Q. You don't know what became of those, do you?

[fol 162] A. I do not.

Mr. Prescott: I have no further questions.

The Court: Step down. Approach the Bench, gentlemen.

(Bench Conference.)

Judge Pugh: Now ladies and gentlemen of the jury, we have arrived at our usual recess time and we will adjourn this case at this time until 9:30 tomorrow morning. In the meantime you will not discuss this case amongst yourselves, or allow anyone to discuss this case in your



presence; and you are not to read the newspapers, if there is anything in the papers about it. That is to keep your minds entirely free from any prejudice and you are to decide the case upon the evidence that has come from the witness stand; so you will not discuss the case among yourselves, allow no one to discuss it with you, nor allow anyone to discuss it in your presence, nor read any newspaper articles that might refer to the case.

Case adjourned to December 5, 1961, at 9:30 A.M.

[fol. 163]

December 5, 1961.

9:30 A.M.

JAMES GILES, a witness of lawful age, called for examination by counsel for the defense, and having first been duly sworn, according to law, was examined and testified as follows, upon

**Direct examination.**

**By Mr. Prescott:**

Q. What is your full name?

A. James Vernon Giles.

Q. Where do you live?

A. Spencerville, Maryland; on Batson Road.

Q. How long have you lived there?

A. All my life.

Q. With whom do you live?

A. My parents.

Q. How old are you, James?

A. Twenty.

Q. How much education do you have?

A. I graduated from Sherwood, in June of 1961.

Q. And that was just a month prior to this happening?

A. That is right.

Q. What employment were you following at the time of this incident.

A. Well I worked for James Earle Layman.

[fol. 164] Q. Doing what?

A. Landscaping.

Q. Tell the Court and ladies and gentlemen of the jury just what happened that evening after you got off from work?

A. We went to the Patuxent River to swim and fish. We went there about 6:00 o'clock and we were swimming for a while, and then we came back to go fishing.

Q. Where did you go back to?

A. The same place; Patuxent River.

Q. What time did you get back there?

A. About 9:00 o'clock.

Q. How long did you fish?

A. About three or four hours.

Q. And what time was it when you were on your way home again?

A. Between 12:00 and 12:30.

Q. With whom did you go to the river, fishing?

A. John, my brother and Joseph Johnson, and John Bowie.

Q. How did you get down to the river?

A. With John Bowie.

Q. In John Bowie's car?

A. Yes.

Q. Where did you park that car?

[fol. 165] A. Right in front of the fence, the barricade.

Q. That is, on the edge of the Suburban Sanitary Commission property?

A. Yes, sir.

Q. Which way was the car facing?

A. It was facing the river.

Q. Now when you came up to the car to go home, what did you boys do?

A. Well we stood right behind the car. We were trying to show him how to back back, to keep it from going into the ditch on the side, and Johnson asked the boy for a cigarette or something.



Q. What boy; asked what boy?

A. The boy that was sitting in a 1956 or 1955 Ford.

Q. Where was that Ford?

A. It was parked on the lefthand side of the road.

Q. Lefthand side of the road, facing in which direction?

A. Facing out.

Q. It was facing back up Batson Road?

A. Yes.

Q. And it was on the lefthand side as you faced up Batson Road?

A. That is right.

Q. And you boys were guiding Bowie's car around that [fol. 166] car; is that right?

A. That is right.

Q. After Bowie got around that car, what did you do?

A. Well the boy had asked if we had enough room to get by and then Johnson asked him for a cigarette and the boy said something to Johnson; I don't recall the exact words, but Johnson said he called him a name.

Q. What did he call him?

A. Johnson said he called him a "black mother fucker".

Q. Did you hear him call Johnson that?

A. I did not.

Q. What did Johnson do?

A. He told him if he did it again he would pull his ass out of the car.

Q. Did he do it again?

A. Yes, he did and said for us to get away from the car.

Q. What did Johnson do at that point?

A. He threw a stone at him, but Stewart Foster bent down in the seat before he threw it at him.

Q. Where were you at that time?

A. Standing behind Johnson.

Q. And you say Johnson threw a stone through the window; is that the stone he threw through the window? (indicating the stone that has been admitted into evidence) [fol. 167] A. I don't think so; it couldn't possibly have been that big.

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Q. What, if anything, happened after he threw this stone through the window?

A. A person jumped from the lefthand side of the car and went up through the woods.

Q. Who was that person?

A. Joyce Carol Roberts.

Q. Did you know who she was at that time?

A. No, I did not.

Q. When did you find out who she was?

A. When I got in the woods.

Q. How long was that after you had this altercation with Foster?

A. About fifteen minutes.

Q. What happened after Joyce got out of the car and ran into the woods?

A. Well Stewart Foster, he got out too.

Q. Which side of the car did he get out of?

A. Righthand, rear.

Q. What part of the car were Foster and this girl seated in?

A. The girl was in the left rear, and he was in the right rear.

[fol. 168] Q. They weren't in the front seat of the car, but the back seat, is that right?

A. Yes.

Q. What happened when Foster got out of the car?

A. Well Johnson struck him when he got out.

Q. How many times did he strike him?

A. Once.

Q. What happened to Foster?

A. He dropped to the ground.

Q. What did he strike him with?

A. Well I can't say for sure.

Q. You were there, weren't you?

A. Yes, I was there, but you couldn't see too well; it was dark, with night and the woods are quite thick. It was hard to see what he had. It might have been his fist.



Q. But he knocked him out; is that right?

A. Well he was semi-conscious, between. He wasn't exactly unconscious.

Q. What did you and Johnson do after he knocked Foster to the ground?

A. We went in the woods.

Q. What did you go in the woods for?

A. To see where my brother was.

Q. Did you find your brother?

A. Not right away. We walked down a little path that [fol. 169] goes through there.

Q. Did you find him?

A. We found him. They called us, actually.

Q. Who called you?

A. The girl called us.

Q. How long after the fight with Foster was that?

A. About fifteen to twenty minutes; maybe ten.

Q. And you and Johnson were going up through the woods again at that point?

A. That is right; together.

Q. What did the girl say to you when she called you?

A. She asked us where we had been so long.

Q. What else did she say to you?

A. She didn't say anything to me exactly. Well she said she knew what we had—I don't remember really what she said actually.

Q. What did she do then?

A. Well the next thing she started to take her clothes off. She was talking to John.

Q. You don't know what she said; she just started taking her clothes off?

A. I don't remember what she said except she said he would be first. She decided that herself.

Q. You all didn't have anything to say about that?

A. No. She decided it. She made the decision herself.

[fol. 170] Q. What threats, if any, did any of you boys make to this girl?

A. None.

A. None.

Q. What did you say to her that made her take her clothes off and have sexual relations with you?

A. We didn't make her take her clothes off. She took them off of her own free will.

Q. Did anybody manhandle her?

A. What do you mean by that?

Q. Just what did you do to her?

A. Nothing.

Q. You don't remember what you said, or anything, at the time she took her clothes off?

A. Well she said that she had been with 17 boys the night before—she didn't say the night before, she said sometime that week, I think, I am not sure, and then she said that three more wouldn't make any difference.

Q. Now who did actually have intercourse with her that evening?

A. Johnson and myself.

Q. What did John do?

A. Well he was with the girl and she said that he could be first, but he never did. The reason I don't know.

Q. What did he do. Did he stand up?

A. Johnson and I were off about twenty feet from them. [fol. 171] We went back about twenty feet to the left of them.

Q. What did John do while you and Johnson had intercourse with this girl?

A. Well he was off about twenty feet then too. Well he may have left. I didn't see him.

Q. You heard Detective Kenneth Collins testify here yesterday about your statement to him?

A. That is right.

Q. Was that statement accurate?

A. No, it wasn't.

Q. In what way was it not accurate?

A. Well he asked me questions about the girl.

Q. In other words, that wasn't your language that he was using yesterday?



A. Not at all. He worded it himself.

Q. In other words he asked the questions and answered them?

A. He provided the answers. He had it mixed up in the way he wanted to arrange it.

Q. You mean he made arrangements as to how this thing happened?

A. That's right; he made suggestions.

Q. What did he mean by the statement that you told him you all decided you were going to get some pussy?

A. He asked me did the girl assist me in anyway and I [fol. 172] told him she did and he asked me how and I told him she responded, and he asked me where was her legs and I said they were around me, and he asked me did she kiss me, and I said she did, and then he asked me who put it in and I said she did.

Q. What, if anything, did Joyce do with her clothing when she took them off?

A. She folded them up. I watched her and she put them down right beside her.

Q. Did you tell Detective Collins that you boys discussed taking a little of that pussy?

A. No I didn't. But he told me that Johnson had told him this. He had a statement and he asked me could it have been said and I told him I didn't hear it.

Q. In other words, you didn't tell him it was said?

A. He said "You might have said it yourself" and I am not sure, I might have, but I don't think I did.

Q. Did you hear Foster say he was going to call the police when he left?

A. Yes I did.

Q. Where were you then?

A. I was having intercourse with the girl then.

Q. What, if anything, did the girl do at that time?

A. Nothing. She didn't do anything. She didn't holler to him or anything of that sort.

[fol. 173] Q. What, if any, protest did she ever make to you boys?

A. She didn't make any protest at all. As a matter of fact, she assisted us in every way.

Q. Did the police take your clothes from you when they arrested you the next morning?

A. They did.

Q. You don't know, whether or not they had them examined by the Federal Bureau of Investigation; do you?

A. No, I do not.

Q. And you say this girl called you all over?

A. She did. She asked us where we had been so long.

Q. What, if anything, did she tell you about the other people that had been in the car with she and Foster that night?

A. She said they had gone to get some gas some place.

Q. Did she tell you who they were?

A. She said it was some boys in the car. She didn't say how many it was.

Q. What, if anything, did she tell you about her being on probation?

A. She did say she was in trouble and she couldn't afford to be caught with us.

Q. What did she suggest to you that you all do?

[fol. 174] A. She said we better leave, because if she got caught in the woods that she would have to say it was rape.

Q. When did that happen?

A. Just before the police came.

Q. Where did you go that night, James.

A. Back down to the Patuxent River.

Q. And spent the night there?

A. Yes, sir.

Q. When did you go home?

A. About 6:00 o'clock the next morning.

Q. And that is when you met the police?

A. Yes.

Q. Have you ever been in any trouble before?

A. No, I haven't.



Q. Have you ever been arrested for any crime before?

A. No, I haven't.

Mr. Prescott: I have no further questions.

Cross examination.

By Mr. Cromwell:

Q. James, you remember walking back to Bowie's car and putting fishing tackle in the trunk of the car?

A. That is right, all except the smaller poles and we were going to put them on the floor in the back seat, and put the [fol. 175] big ones in the trunk.

Q. How much fishing tackle did you have?

A. He had one, Johnson had a rod and I had a stick, with a string and hook on it.

Q. What was put in the trunk of the car?

A. Well, the fishing rods, I suppose.

Q. All of that equipment that you have just described?

A. I think so.

Q. Where did you sit in the car, when you got in the car? Did you get in the car?

A. Yes; I got in the back.

Q. Where did your brother sit?

A. I don't remember.

Q. How far up the road did you back before you saw this other car?

A. We were about five feet behind it before we saw it.

Q. And you all got out of the car then?

A. That's right; to direct him back.

Q. All three of you?

A. That's right.

Q. Both you and your brother got out?

A. That's right.

Q. Did you walk up by the car?

A. We had to.

[fol. 176] Q. Where did you stand by the car, near the front of it, or near the back of it?

A. To the left, in front of it.

Q. Where did your brother stand by the car?

A. I don't know exactly.

Q. Now Bowie had his car lights on, didn't he?

A. Yes.

Q. And he backed his car, with the car lights on, right up past this car, didn't he?

A. We got in it after he got by.

Q. After he got by the car though; isn't that right?

A. No, he wasn't exactly past the car; he was just about opposite it; a little beyond it.

Q. He had his lights on at that time, didn't he?

A. That's right.

Q. And you could see who was inside, couldn't you?

A. No, I could not.

Q. With his car lights on you couldn't see two people in that car?

A. You couldn't determine who it was.

Q. You couldn't tell whether it was a boy and a girl?

A. No.

Q. Do you remember telling the police it was a boy and a girl in the car?

A. No; I remember telling him I saw two people.

[fol. 177] Q. Did you hear Bowie's testimony that he could tell there was a girl in the car?

A. I did.

Q. And he would have been the furthestest away of anybody, isn't that true?

A. He was in the car; that's all I know.

Q. When Johnson asked one of the people in the car for a cigarette, did you look at the car then, or were you looking away from it?

A. I was standing behind it.

Q. Did you look in the car?

A. You couldn't see anything, because it was dark.

Q. How about the car lights from Bowie's car?

A. He had turned around.

A. We had started to, but Johnson was still arguing with the boy and that's why we turned around.



Q. His car had driven past that car, hadn't it?

A. It backed up past it.

Q. Hadn't his car lights hit that car?

A. I am sure they had, but I didn't see it.

Q. As his car was passing the car with the boy and girl in it; when Bowie's car was passing it, at what time did Johnson ask for a cigarette, after the car had gotten by or before?

A. When Bowie started to turn around.

Q. When he said that, didn't you look in the car to see who he was talking to?

[fol. 178] A. I may have glanced at the car, but I didn't pay that much attention.

Q. You knew there was a boy in the car, didn't you?

A. I don't know exactly.

Q. You knew there were two people in the car, did you not?

A. Yes.

Q. Did you know one of them was a boy?

A. I don't know; it just looked like two people to me. You couldn't determine whether it was two boys or two girls.

Q. After you got past the car—after Bowie's car passed, what did you do?

A. Johnson—well, he and the boy were arguing. The boy had called him something.

Q. After Johnson asked for a cigarette, did he get a cigarette?

A. Yes.

Q. Somebody gave him a cigarette, didn't they?

A. Somebody reached across Stewart Foster.

Q. Did you see him get the cigarette?

A. Yes.

Q. You saw him get a cigarette from somebody in the back seat?

A. Yes.

Q. Where was Bowie's car at that time?

[fol. 179] A. It was heading out Batson Road.

Q. Do you mean you didn't know there was a girl in the car?

A. I didn't know until I seen her in the woods.

Q. How could Bowie have seen there was a girl in the car?

Mr. Prescott: Objection.

The Court: Sustained.

Q. What did Johnson do with the cigarette after he got it?

A. I suppose he smoked it.

Q. Did you all stand around the car then?

A. Johnson was arguing with the boy.

Q. What were you doing while Johnson was arguing with the boy?

A. Standing there with him.

Q. Were you looking at the person he was arguing with?

A. What do you mean?

Q. Were you looking in the car?

A. I was looking at the person he was talking to.

Q. You weren't looking anywhere else?

A. No.

[fol. 180] Q. You knew there was two people in the car, didn't you?

A. Yes.

Q. But at that point you didn't know there was a girl in the car?

A. Yes.

Q. Did you hear the statement made that "I am going to drag your ass out of that car?"

A. Johnson told him that if he called him a name again he would do that.

Q. Before he had said that, did you all walk back up to Bowie's car?

A. No, we did not.

Q. You never went back to Bowie's car?

A. We had started to, but Johnson was still arguing with the boy and that is why we turned around.



Q. Did you walk up to Bowie's car?

A. No, I did not.

Q. You heard him testify, didn't you, that he drove up the hill and then came back to you?

A. He said John came back.

Q. And you all stood back of the car?

A. Yes.

Q. Was it your brother, John, who went up to Bowie's car?

[fol. 181] A. I don't recall.

Q. You didn't go, then, did you?

A. No.

Q. You stayed at this car, the one with the boy and girl in it?

A. That's right.

Q. When your brother came back, what happened?

A. He stood ten to fifteen feet behind us, across the road.

Q. The road isn't that wide at that point, is it?

A. No, it isn't.

Q. As a matter of fact it isn't as wide as the distance between you and me, is it?

A. It's wide enough for two cars to pass.

Q. And the one that the girl and boy were in had half of the road?

A. No. They were parked off to the side of the road.

Q. How far was your brother standing away from this car when you were having this argument?

A. About the same distance.

Q. Do you remember telling the police that the three of you went around the back of the car and had a conversation?

A. No. He said that himself. He asked me had we had a conversation and I said we had been talking all evening.

[fol. 182] Q. Did you talk in back of the car?

A. No.

Q. Do you remember saying that you all got together and agreed to drag his ass out of the car and take some money?

A. No, I do not. He asked me—well, he said that Johnson had said this and I told him that that might have been said; like I said before, but I never heard him say it.

Q. You might have said it, didn't you?

A. No, I didn't. I told him that might have been said but that I didn't hear it at the time, and then he asked me could I have said this and I told him I didn't think I did.

Q. Did you say you ever had that in mind?

A. No, I didn't.

Q. You didn't have that in mind at the time?

A. No, I didn't.

Q. All right, what words did the Foster boy say to you three men standing beside the car that made you start to break the windows in?

A. He called Johnson a "black mother fucker" and he said he had three others coming back who would take care of us when they got back.

Q. There wasn't any other people there at that time, was there?

[fol. 183] A. Just the two people.

Q. Your brother was there, wasn't he?

A. Yes, about ten to fifteen feet on the other side of the road.

Q. And Johnson was there?

A. Yes.

Q. Can you point out on this picture, State's Exhibit #2, where your brother was standing?

A. Back here on the side of the road.

Q. How far would you guess it is from the car to the side of the road?

A. I can't determine from that picture.

Q. Where were you standing at the time this statement was made by the Foster boy, as you claim?

A. Just about there.

Q. You could see in the car, wouldn't you?

A. No; it was dark and there was no moon.

Q. Do you remember what statement was made after that?

A. Do I remember what?



Q. What statement was made by any of you after Foster said what you claim he said. Did you say anything, or did Johnson say anything after that?

A. Yes; Johnson told him he would pull his ass out of the car. He said it again.

[fol. 184] Q. Did he ask for money?

A. Who?

Q. Any of you?

A. No.

Q. Subsequently you got some money, didn't you?

A. I did.

Q. But you didn't ask him for any money at that time?

A. No.

Q. Do you remember saying "I want your money" and he said "no". Do you remember that?

A. No.

Q. Do you remember telling the police that?

A. No; I told the police I didn't say it.

Q. Who said it?

A. I never heard anybody said it.

Q. Where did the police get the idea that somebody had said it?

A. I don't know. They asked me if anybody said it and I told them I didn't know.

Q. When did Johnson start to break the windows of the car out?

A. When the boy told him his three friends would come back and he would take care of us and reached down.

Q. You didn't know why he was reaching down, did you?

[fol. 185] A. It appeared to me that he was reaching for something.

Q. And the three of you, or just Johnson, started to break the windows of the car in?

A. He threw a stone in the window.

Q. Just one stone?

A. That's all I saw.

Q. And you were standing right there?

A. That is right.

A. Do I remember what?

Q. Do you have any explanation of how the front window on the right hand side and the back window also were broken?

A. I threw one stone.

Q. Little stone or big stone?

A. About that size (indicating with fingers).

Q. Do you know the thickness of the windows on a car like this?

A. About a quarter of an inch.

Q. From the way you threw it, did it break the window the way it is shown in this picture?

A. Which window?

Q. Either window.

A. I don't think I hit the window. I either hit it here or here, because I didn't hear any glass.

Q. Well the one stone that Johnson threw broke the back [fol. 186] window and the front window of the car; is that right?

A. I suppose so.

Q. After you broke the window, what happened?

A. I didn't break the window.

Q. After the window was broken, what happened?

A. The boy jumped out.

Q. What did you do then?

A. Nothing.

Q. Just stood around and watched?

A. I just stood there.

Q. What did your brother do?

A. He was across the road when the boy jumped out of the car and he started walking.

Q. He was running, wasn't he?

A. No, walking at a fast pace.

Q. What was the person that got out on the lefthand side of the car doing; was that person running?

A. I think so.

Q. Do you have any idea why?

A. No, I don't.



Q. Did you hear any conversation in the car between the two people in the car?

A. No.

Q. All right, who hit the boy that got out on the right-hand side of the car?

[fol. 187] A. Johnson.

Q. Do you remember telling the police that you hit him?

A. No, I do not.

Q. Were you standing there when Johnson hit him?

A. That's right.

Q. What did he hit him with?

A. It could have been his fist, and it could have been a stone, but I think it was his fist; because he was too close to hit him with anything else.

Q. Did the boy fall down to the ground?

A. Yes.

Q. What did you do then?

A. Nothing.

Q. Just stood there and watched him?

A. Yes.

Q. And then you and Johnson went up in the woods?

A. Yes.

Q. How long were you there?

A. Ten or fifteen minutes.

Q. During that ten or fifteen minute period what were you doing; were you talking, or what?

A. We weren't talking.

Q. Just standing there?

A. We started to walk up through the woods.

[fol. 188] Q. Was that right after the boy fell down?

A. No; not right after.

Q. How long after?

A. Maybe couple of minutes.

Q. Why did you walk up through the woods?

A. Because my brother went up there and we went up after him.

Q. Did you call to your brother?

A. No, we didn't exactly call him.

Q. Were you looking for your brother?

A. Yes.

Q. Why?

A. Because he was up in the woods and we were afraid he might need some assistance.

Q. Did you hear any noises up there?

A. No.

Q. Were you calling back and forth for your brother?

A. No.

Q. You weren't calling him?

A. I didn't call nobody.

Q. Did Johnson call?

A. I didn't hear him.

Q. Did you go back to the car after you started to look in the woods at first?

A. That is right.

[fol. 189] Q. Was that because you couldn't find your brother?

A. That is right.

Q. When you got back to the car; what happened?

A. Foster was still on the ground.

Q. What did you do then?

A. He was bleeding at the side of his mouth.

Q. Did you pick up a stick in the woods?

A. Yea.

Q. Was it a big stick?

A. About the size of a broom stick.

Q. What did you do with that stick, when you got back to the car?

A. Nothing.

Q. Did you have it in your hand?

A. Yes.

Q. Did you put it up beside his head?

A. Yea.

Q. Did you stand over him with a stick?

A. I wasn't standing over him.

A. Yea.



**Q.** Did you have it in your hands all the time, from the time you came from Bowie's car to the time this incident happened?

**A.** That is right.

**Q.** Were you beating the bushes with the stick, trying to find anybody?

[fol. 190] **A.** No, I wasn't.

**Q.** When you got back to the car and were standing over the boy, Stewart Foster, was he unconscious then?

**A.** No.

**Q.** But he was bleeding at the side of his mouth?

**A.** That is right.

**Q.** Did you say anything to him?

**A.** No; he said something to me.

**Q.** What did he say?

**A.** He asked me not to hurt him.

**Q.** What did you say to him?

**A.** I said I wasn't going to hurt him.

**Q.** You told him you wanted a quarter?

**A.** No.

**Q.** Do you remember taking a quarter out of his pocket?

**A.** No.

**Q.** Do you remember his giving you a quarter?

**A.** Yes.

**Q.** Why did he give it to you?

**A.** He said he didn't have any money.

**Q.** Why did he say that if nobody mentioned money to him?

**A.** He was laying there and he looked as if he was about to cry and he said he didn't have any money and he [fol. 191] didn't want to get hurt, and I told him I wasn't going to hurt him and I wanted to see how bad he was hurt and he reached in the side of his jacket and handed me the quarter and said that was all he had.

**Q.** So when Foster testified that you told him you wanted his money, he was wrong?

**A.** Yes.

**A.** No, we didn't exactly call him.

**Q. Where was Johnson at this time?**

**A. Standing right behind the car.**

**Q. Do you know where your brother was at that time?**

**A. No.**

**Q. Did you hear a noise then?**

**A. I think I heard some leaves cracking.**

**Q. And that made you go into the woods, didn't it?**

**A. Yes; we walked into the woods.**

**Q. You didn't run?**

**A. We walked into the woods.**

**Q. How far away was the noise you heard?**

**A. I couldn't determine; it was about thirty-five feet I guess.**

**Q. It was pretty dark in there, wasn't it?**

**A. Yes.**

**Q. You couldn't see anything in there, could you?**

**A. Not from the road, no.**

**Q. It was very heavily wooded, wasn't it?**

**[fol. 192] A. That's right.**

**Q. With a lot of underbrush and bushes and so forth?**

**A. That's right.**

**Q. Did you call out to your brother when you went into the woods?**

**A. No.**

**Q. When you went into the woods how long did it take you to find your brother?**

**A. Not very long.**

**Q. He was laying on top of the girl then wasn't he?**

**A. No; she called us.**

**Q. I am asking you where your brother was.**

**A. Sitting beside her.**

**Q. Where was she?**

**A. Sitting beside him.**

**Q. She wasn't laying on the ground. She was sitting there?**

**A. That is right.**

**A. When she and he would be first.**



Q. All three of you came up then, or the two of you came up to your brother then?

A. She called us.

Q. What did she say?

A. She asked us where we had been so long.

Q. When did she start talking about her probation?

A. Who start talking?

[fol. 193] Q. The girl and you

A. She told me she couldn't afford to get in any trouble and if she was caught she would have to say it was rape.

Q. She never made any mention of probation to you?

A. No.

Q. Do you remember testifying to that on your direct examination; that she said she was on probation and couldn't afford to get into trouble?

A. The girl told me she had been in trouble and she couldn't afford to be caught with us. That she would have to say it was rape if she was caught.

Q. Do you remember saying on your direct examination that the girl said she was on probation?

A. I don't remember that.

Q. Well she never told you that?

A. She didn't exactly say she was on probation. She said she had been in trouble and couldn't afford to be caught.

Q. When you walked up and found your brother and the girl sitting side by side, what did you and Johnson do?

A. We went up to them.

Q. Right up by her?

A. Yes.

Q. It was very dark in there, wasn't it?

[fol. 194] A. That's right.

Q. Couldn't see anything around there, could you?

A. What do you mean?

Q. I mean the foliage was very thick and you couldn't see anything?

A. You couldn't recognize a person, if that's what you mean.

Q. How close would you have to be to recognize a person?

A. I don't think you could recognize a person in those woods.

Q. Now when you came up what did you say to her, after she said "Where have you been so long?"

A. I didn't say anything.

Q. What did Johnson say to her?

A. He told her that we had been looking for her.

Q. You told her you were looking for her?

A. Not me; he did.

Q. Why was he looking for her?

A. Why were we looking for her?

Q. Yes.

A. Do you mean did he tell her why we were looking for her?

Q. Do you know why you were looking for her?

A. Like I said before, we went up in the woods to [fol. 195] assist my brother.

Q. Did you have any reason to believe your brother was in trouble in the woods?

A. He may have; he was in there for some time and we didn't know where he was.

Q. Did you and the other people there have any conversation about who was going to be first?

A. No; she decided that herself. She said he had found her and he could be first.

Q. Do you remember making any statement to the police that there was a fight as to who was going to be first?

A. No. I never made that statement.

Q. Was there any conversation between you and your brother and Johnson as to who was to be first?

A. No. She decided that herself.

Q. When did you form the idea that you were going to have sexual relations with her?

A. When she took her clothes off.

Q. That was at what time?

A. When she said he would be first.



Q. When she said he could be first, what did you and Johnson do?

A. Went off to the side.

Q. About twenty feet back?

A. No; fifteen.

[fol. 196] Q. You couldn't see what happened there then, could you?

A. No.

Q. You couldn't tell whether your brother had relations with her or not?

A. No.

Q. How long were you off fifteen feet from them, in this dark area?

A. When my brother came up to us.

Q. Do you remember how long you were back fifteen feet from your brother and the girl?

A. No.

Q. Do you remember telling the police your brother was with her for fifteen minutes?

A. No.

Q. Do you remember testifying on direct examination that you stood back for ten or fifteen minutes?

A. I said Johnson.

Q. When your brother was with her.

A. No.

Q. How long did you stay back while your brother was with her; more than ten minutes?

A. I think it was less.

Q. Was it around ten minutes?

A. No it wasn't.

[fol. 197] Q. But you don't know what happened, do you, while your brother and the girl were there together, on the ground, and she had her clothes off?

A. She said he didn't bother her.

Q. But you don't know what happened, do you?

A. I can't say for sure, no.

Q. Did you walk back up after a few minutes, to where the girl and your brother were?

A. Johnson did.

Q. You didn't walk back up?

A. No.

Q. Why did you stay back?

A. Because Johnson said—

Q. He said he was going to be next; didn't he?

A. That's right.

Q. How did he decide that; did you and he have any conversation about it?

A. No.

Q. Why did he decide to walk up? Did somebody call him over?

A. What?

Q. Did your brother say anything to Johnson that made him go over?

A. No.

Q. But he just decided it was time for him to go [fol. 198] over?

A. He had started back.

Q. He had finished?

A. Who had finished?

Q. Your brother was no longer with the girl and then Johnson walked over; is that correct?

A. Yes.

Q. You don't know what happened while Johnson was there, do you?

A. That is right.

Q. Where did your brother go after he walked away from the girl?

A. I think he left. I didn't see him at any time.

Q. So you don't know when he left?

A. Well I saw him right after, when he didn't have intercourse with the girl.

Q. When was that?

A. When he didn't have intercourse with the girl. She said that.



Q. Did she say that he didn't complete the act?

A. She said that he didn't. Didn't; period.

Q. That he didn't even touch her?

A. That is right.

Q. Do you know what your brother and the girl were doing during that fifteen minutes, while they were on the [fol. 199] ground and the girl didn't have any clothes on, out in the woods at that time? When you weren't around there, do you know what they were doing?

A. How could I possibly know, if I wasn't around there?

Q. And when your brother left, did you see him?

A. Do you mean did I see him leaving?

Q. There came a time when he left; didn't there?

A. That is right.

Q. And he didn't walk over to you, did he?

A. No.

Q. Were you standing there by yourself then, when Johnson went over to this girl?

A. That is right.

Q. And what happened after that?

A. Then Johnson was having intercourse with the girl.

Q. About how long?

A. About five minutes.

Q. You walked over to them then?

A. Yes.

Q. Were they still having intercourse at that time?

A. That is right.

Q. What did you do; watch?

A. Not exactly.

[fol. 200] Q. What did you do?

A. Just stood there.

Q. You didn't look at them?

A. Not exactly.

Q. You either looked at them, or you didn't?

A. I didn't just stand and stare at them.

Q. How long did you stand there?

A. Maybe ten or fifteen minutes.

Q. While they were having intercourse?

A. That is right.

Q. That would be about twenty minutes then, all together, wouldn't it?

A. Maybe.

Q. Where was your brother at that time?

A. I don't know.

Q. He wasn't standing around there, was he?

A. I didn't see him.

Q. Do you know that he had gone, or what?

A. He probably had gone. I didn't see him.

Q. You didn't have any conversation with your brother then, at that time?

A. No.

Q. And you didn't have any conversation at any time, around that time, with your brother, not until you saw him at the police station; is that right?

[fol. 201] A. No; he came back.

Q. When did he come back?

A. When I was having intercourse with the girl.

Q. Where had he been; do you know. Did he say?

A. No, he didn't.

Q. After Johnson finished, did you have intercourse with the girl right away?

A. I started and the police car came.

Q. How long had you been having intercourse before you saw the lights on the car?

A. Maybe ten minutes; or five.

Q. Was the siren going on the car?

A. At first.

Q. That is why you stopped; wasn't it?

A. I stopped when I saw the lights.

Q. When you saw the car did you think it was a police car?

A. Yes, because Foster had said he was going to call the police.

Q. So you stopped then; didn't you?

A. Yes, I did.



Q. Where was your brother at that time; he wasn't standing there, was he?

A. No, he had already left.

Q. So your brother left after he was with the girl and [fol. 202] then came back, and left again?

A. That is right.

Q. He came back while you were having intercourse with her?

A. That is right.

Q. How long did he stay there, while you were having intercourse with her?

A. We didn't leave until she said we had better leave, because the police were coming, and if she was caught she would have to say it was rape; and then we left.

Q. When did you stop having intercourse with her?

A. When I saw the lights.

Q. As soon as you saw these lights you stopped having intercourse?

A. That is right.

Q. And you got up and ran, didn't you?

A. Well he was there then—

Q. When did you stop having intercourse with the girl?

A. Just before the police car stopped.

Q. And as soon as you stopped having intercourse, you got up and ran, didn't you?

A. That is right.

Q. When did you have this conversation with the girl about her being on probation?

[fol. 203] A. While I was having intercourse with her.

Q. You were having this conversation while you were having intercourse with her?

A. That is right.

Q. Did you have conversation with her all the time, or just at that point?

A. She did most of the talking.

Q. Why did you run away?

A. Because she said if she was caught in the woods, she would have to say it was rape.

Q. And you did run away, didn't you?

A. Of course.

Q. And where did you run to?

A. Back to Patuxent River.

Q. And you hadn't had any conversation with your brother at all, had you, since the time he was with that girl?

A. No.

Q. You do remember having a conversation at the police station, in front of your brother, don't you?

A. At which police station.

Q. I mean at the jail. On the 23rd of July, 1961.

A. No I did not have a conversation with him.

Q. Did you go over to the jail with some police officers and see your brother?

[fol. 204] A. I was already at the jail.

Q. Did there come a time during that day when you and your brother were in each other's presence?

A. That is right.

Q. At that time do you remember making the statement "John, you were there when we agreed to take some pussy." Do you remember making that statement?

A. No. He asked me was John there and I told him he was and he said when we were with the girl, was he there—

Mr. Prescott: Who said what?

(The witness continues) Officer Collins, he asked me.

Cross examination.

By Mr. Cromwell:

Q. What did he ask you?

A. He asked me was John there and I said that he was.

Q. What did John say?

A. They didn't let him say nothing.

Q. What do you mean? Did they have him gagged or something?

A. No. I don't know why he didn't say anything. They probably told him not to.



Q. You don't know. He just stood there and didn't make any statements; isn't that correct?

A. That is right.

Q. Nobody in your presence told him he couldn't say [fol. 205] anything; did they?

A. That is right.

Q. So he didn't deny anything in your presence?

A. That is right.

Q. What statements did you make in the presence of your brother?

A. He asked me was John there and I said that he was.

Q. That is all?

A. That's all he asked me.

Q. And then you left?

A. He said when we were with the girl was John there and I said he was.

Q. Do you remember telling the police that your brother was the first one to have intercourse with the girl?

A. No.

Q. Do you remember telling them that he was with the girl for about fifteen minutes?

A. No; they didn't ask me for any time.

Q. Do you remember making any statements at all, other than that he was there. This is when you and Detective Collins and your brother were in each other's presence.

A. At the Rockville jail?

Q. That is right.

A. No; there was nothing else said.

Q. Did he make any other statements?

[fol. 206] A. I don't think so.

Q. You were present at the time, weren't you?

A. I said I didn't think so.

Q. After you had left the jail do you recall any of the line-ups, or after you were arrested do you recall being in any line-ups?

A. Yes; I was in two.

Q. Where were they held?

A. Glenmont Police Station.

Q. How many people were in the line-up?

A. About six.

Q. Do you think there was anything unfair about the line-up?

A. Absolutely.

Q. What?

A. We were told to give our names and where we lived before the girl ever came.

Q. This is when you were arrested?

A. When she came before us she was told our names and where we lived.

Q. She didn't know your name, did she?

A. No.

Q. She never asked you your name, did she?

A. No.

Mr. Prescott: Objection.

[fol. 207] The Court: Sustained.

Q. As far as the other people in the line-up is concerned, they were all about your same size, weren't they?

A. Most of them smaller; well, maybe around the same size. I will say that.

Q. And she did pick you out of the line-up, didn't she?

A. Yes, once my name and address was given her.

Q. Did she pick you out of the second line-up, also?

A. Well she didn't have much of a problem to pick us out then.

Q. After that they took you back to the scene, didn't they; where this incident took place?

A. That is right.

Q. And you identified the car that was there, didn't you?

A. Yes.

Q. And that picture which is in evidence as State's Exhibits 3 and 4 is—

A. Which picture is that?

Q. These pictures right here. These are fair representations of the car as you saw it on that night, aren't they?

A. You couldn't determine.



[fol. 20.] Q. I mean as far as the physical appearance of the car is concerned.

A. Yes, that is the car.

Q. Did you identify this spot shown in State's Exhibit #5 as the place where the sexual relations had taken place?

A. I can't determine from that picture.

Q. Was it a spot like that?

A. Well you can't determine from this. I can't.

Q. Can you look at it and see whether it is like the place where relations took place?

A. It could be.

Q. Getting back to the time when you were standing in the woods and were looking for your brother. This is after you had gotten the quarter from the Foster boy and went back out in the woods, what statement did the girl make to you as you were walking in the woods with Johnson.

A. She called us and asked us where we had been so long.

Q. And what did you say as the result of that?

A. Nothing.

Q. What did you do as the result of what she said to you?

A. Johnson and I walked over to where they were.

Q. When did you leave the spot where your brother and [fol. 209] the girl were?

A. She decided that my brother would have intercourse with her first.

Q. And then you left and stood back about fifteen to twenty feet?

A. I wouldn't say fifteen to twenty feet.

Q. Don't you remember saying fifteen to twenty feet?

A. Yes I remember saying that.

Q. Then subsequently you went over to her, after Johnson finished having intercourse with her; is that right?

A. No; while Johnson was still with her.

Q. And after Johnson finished, then you had intercourse with her; is that right?

A. That's right; she said "You are next."

Q. Is it your position that she raped you?

A. I wouldn't exactly say that.

Q. Do you remember telling the police that you didn't have to use any force?

A. No. He said that himself. Mr. Collins said that.

Q. What did he say?

A. He said "You didn't have to use any force; she gave it to you, huh"; just like that.

Q. What did you say?

A. I said we didn't use any force.

Q. Do you remember his asking you the question "What [fol. 210] would you have done if you had been in the girl's place?"

A. Yes, he did say that.

Q. And what did you say?

A. I told him I wasn't a girl and I couldn't say what I would do.

Q. Did the girl appear to you to cooperate?

A. Absolutely.

Q. Do you remember telling the police that if you had been in the girl's place you would have cooperated also?

A. No, I did not.

Q. And that wasn't accurate, what Detective Collins said, is that right?

A. It was not accurate.

Mr. Cromwell: That is all.

Mr. Prescott: I have no further questions.

The Court: Step down.

JOHN HENRY GILES, a witness of lawful age, called for examination by counsel for the defense, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct examination.

[fol. 211] Q. What is your name?

A. John Henry Giles.

Q. Your age?

A. Fifty-eight.



Q. And your occupation?

A. Janitor.

Q. Where are you employed?

A. John Hopkins.

Q. How long have you been employed there?

A. Fifteen years.

Q. Do you have any other occupation?

A. Suburban Trust Bank.

Q. What do you do there?

A. Janitor.

Q. How long have you been employed there?

A. Seven years.

Q. Are you the father of these two boys, John and James Giles?

A. That is right.

Q. Mr. Giles, have you ever had any trouble with these boys before?

A. No, sir; they worked good.

Mr. Kardy: If Mr. Prescott is going to go into reputation, I think there are two or three standard questions and I think the answer is either "yes" or "no."

[fol. 212] The Court: You didn't object to it.

Mr. Kardy: I object now.

The Court: Too late. Ask another question.

Mr. Prescott: If Mr. Kardy insists that I go through the three or four questions I will be glad to do so.

The Court: Ask another question.

Mr. Prescott: I have nothing further. That is the defendants' case, your Honor.

Mr. Kardy: No rebuttal. The State rests.

Mr. Prescott: May we approach the Bench, your Honor?

The Court: Yes.

A. No; while [Bench Conferenced]

Q. And after [Motion for Directed Verdict and Dismissal of Trial]

Mr. Prescott: I make a motion for a directed verdict in behalf of both defendants, John and James Giles.

[fol. 213] The Court: The motion is denied.

Motion to Withdraw Juror and for a Mistrial and Denial Thereof

Mr. Prescott: I make a motion for a juror to be withdrawn and a mistrial declared, because there are no negroes on this jury panel.

The Court: The motion is denied.

[Recess.]

Mr. Kardy: The State at this time will abandon the second count, assault with intent to rape, and the third count, assault and battery, and go to the jury on the first count in the indictment, that of rape.

The Court: All right, the second and third counts are abandoned by the State.

Closing Argument by Mr. Cromwell.

Closing Argument by Mr. Prescott.

Closing Argument in Rebuttal by Mr. Kardy.

During the course of Mr. Kardy's rebuttal argument Mr. Prescott noted an objection to Mr. Kardy referring to the complaining witness's testimony in the lower court regard- [fol. 214] ing the witness having said at one time she was raped by two men and later correcting it to three, which objection was over-ruled.

During the course of Mr. Kardy's rebuttal argument Mr. Prescott noted an objection to the State's Attorney referring to the argument by defense counsel and the fact that he cited laws of Alabama and other states rather than the law of Maryland. This objection was over-ruled by the Court.

### JUDGE PUGH'S INSTRUCTIONS TO THE JURY

Now, ladies and gentlemen of the jury, the form of your verdict in this case will simply be "Guilty on the First Count" or "Guilty on the First Count without capital pun-



ishment" or "Not Guilty", as you shall find from the law and the evidence. You will make a finding as to each defendant under that instruction. Since the lunch hour has arrived we have ordered your lunch and it will be available when you retire to your jury room. Swear the Bailiff.

### VERDICT

The jury returned a verdict of "Guilty on the First Count" as to both defendants.

Judge Pugh: Mr. Prescott, the State's Attorney accepts the sentencing of these two defendants at 3:00 o'clock on Monday, December 11, 1961, and any evidence you have to offer will be heard at that time.

Adjourned.

[fol. 215]

At Rockville, Maryland

December 11, 1961

3:00 o'clock P.M.

Judge Pugh: Mr. Prescott, do you have any evidence to offer in this case?

Mr. Prescott: If it please the Court I would like to call Mr. Strong to the stand.

JAMES B. STRONG, a witness of lawful age, called for examination by counsel for the defendants, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct examination.

By Mr. Prescott:

Q. What is your name, sir?

A. James B. Strong.

Q. And your occupation?

A. Electronics engineer.

**Q.** Where do you reside?

**A.** 602 Riding Stable Road, Laurel.

**Q.** Do you know the two defendants here, James and John Giles?

**A.** Yes, I do.

**Q.** How long have you known them?

[fol. 216] **A.** I expect I have known them between six or seven years.

**Q.** How did you come to know them?

**A.** Their father and mother worked for me from time to time, and they have helped out, doing farm work around my place, picking corn and things like that.

**Q.** What kind of workers were they?

**A.** They were very good workers. You could leave them by themselves and they kept right on working.

**Q.** What kind of young men did they appear to you to be?

**A.** At that time they appeared to be very nice boys. They seemed to be honest and straightforward.

**Mr. Prescott:** I have no further questions.

**Mr. Kardy:** No questions.

#### STATEMENT OF MR. PRESCOTT

**Mr. Prescott:** That is all I have to offer. If it please your Honor, of course I realize the seriousness and the nature of this charge, and your Honor has heard all the evidence, and there isn't much I can say concerning that, but I certainly feel that this is a case in which the death sentence [fol. 217] should not apply and I sincerely request that your Honor not impose the death sentence upon these boys in this case. They are both young men and they had a good record up until now, and I feel that if your Honor was lenient with them they can in the future make good citizens of the State and the community.

**Judge Pugh:** James V. Giles, stand up. Have you any reason to assign why the Court should not proceed to sentence you in No. 4590 Criminals, in which you have been

in a trial at which these defendants were convicted, after it is evidence at this time.



found guilty by the jury of the crime of rape? Anything you want to say? —

James Giles: No, sir.

#### SENTENCES

Judge Pugh: I might say to you, Giles, that the verdict of the jury in this case was fully justified under the evidence. You have been convicted of a most serious offense. The crime of rape of a woman has been placed in the same category as murder in the first degree, when the facts justify an unqualified verdict, such as has been rendered by the Jury in this case.

The law protects a woman from unwarranted attacks against her person. You have also violated the natural law of decency, as well as the statute law of this State. Your passionate desire to carnally know this sixteen year old [fol. 218] girl led you to commit violence against her escort, his person and property. You were so ravenous that nothing could prevent you from committing this treacherous act. You were determined to satisfy your passionate desires.

The Jury has placed the responsibility for your future in my hands. I shall not evade it. The purpose of a sentence is twofold; first, to mete out the punishment for the crime committed, and second, to deter others from committing a like offense. By your vicious act, you are not entitled to any consideration by this Court.

It is the sentence of this Court that you, James V. Giles, be taken into custody by the Sheriff of this County and held by him in solitary confinement; that under such guard or guards as he shall determine to be necessary, and as soon hereafter as possible, the said Sheriff shall deliver you to the Warden of the Maryland Penitentiary, where you shall be placed in solitary confinement under such guard or guards as shall be necessary, until such time as the warrant directing your execution shall name, when you shall suffer death by the administration of a lethal gas — and may God have mercy on your soul.

John G. Giles, stand up. Do you have any reason to assign why the Court should not proceed to sentence you in No. 4590 Criminals, in which you have been found guilty [fol. 219] by the jury of the crime of rape: Anything you want to say?

John G. Giles: I do.

Judge Pugh: What do you have to say?

John G. Giles: Well the girl she said I didn't rape her. I said I didn't rape her and they said I didn't rape her, and so that is all.

Judge Pugh: Is that all you have to say?

John G. Giles: Yes.

Judge Pugh: Of course the jury didn't believe you; and the jury rightly didn't believe you. What I have said to your brother, the co-defendant in this case, applies to you.

It is the sentence of this Court that you, John G. Giles, be taken into custody by the Sheriff of this County and held by him in solitary confinement; that under such guard or guards as he shall determine to be necessary, and as soon hereafter as possible, the said Sheriff shall deliver you to the Warden of the Maryland Penitentiary, where you shall be placed in solitary confinement, under such guard or guards as shall be necessary, until such time as the [fol. 220] warrant directing your execution shall name, when you shall suffer death by the administration of a lethal gas—and may God have mercy on your soul.

Reporter's Certificate [omitted in printing].

[fol. 35]

# Transcript of Proceedings on Post Conviction Petition

## INTRODUCTION OF PETITIONER'S EXHIBIT 1

### —TRIAL COURT RECORD

Mr. Forer: Call John Patrick Stephens. Your Honor, the clerk has the clerk's copy of the transcript of the criminal trial at which these petitioners were convicted; I offer it in evidence at this time.



The Court: Are the summonses here today?

Mr. Forer: The clerk sent it up, the transcript of the criminal trial. It is right there, Your Honor. That is the clerk's copy.

The Court: Mr. Kardy, any objection?

Mr. Kardy: No, Your Honor, none whatsoever.

The Court: Mark it Petitioners' Exhibit Number 1.

No objection, be admitted in evidence.

JOHN PATRICK STEPHENS, was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Forer:

Q. I want to leave that and go back to an earlier matter, the episode in which Joyce Roberts was supposedly raped was Thursday, July 20, 1961. Did you hear about that episode right after it happened?

A. Yes.

[fol. 36] Q. All right. Now, that was a Thursday, July 20th; when was the last time you saw Joyce Roberts before that Thursday?

A. Saturday before that Thursday.

Q. The Saturday before that?

(Witness nods head.)

Q. Was it in the daytime or the nighttime?

A. Night.

Q. Where did you meet her?

A. At a place called California Inn in Laurel, Maryland.

Q. Did you meet her there by pre-arrangement?

A. No, accidental, I mean.

Q. Did you know she was there?

A. Before I went?

Q. Yes.

A. No, I just—

Q. Now, did you and she leave the California Inn in Laurel, Maryland, and go somewhere together?

A. Yes.

Q. Did you have a discussion with her as to where you would go?

A. Yes. She said that—

Q. What did she say?

A. She said she did not want to go down into the Hyattsville, Maryland, area because she was in trouble on her probation.

Q. Now, where did you go?

A. We stayed at Laurel and went preferably to my house.

Q. And what did you do at your house?

A. Went swimming and had sexual relationship.

Q. Following that did you have a conversation with Joyce?

A. Yes.

Q. What night of the week was this?

A. Saturday night.

Q. And what night was this with reference to the episode of the alleged rape of Thursday, July 20th?

[fol. 37] Q. Now tell us this conversation.

A. Well—

Mr. Kardy: Your Honor, we are going to object. This is before the crime.

The Court: I think it is important, Mr. Kardy. I will overrule it. I will hear it, subject to the proffer he has made.

The Witness: She told me that she liked me very much having sexual relations with me. This I could not believe because of so many—



By Mr. Forer:

Q. Just tell us what was said; not what you believe.

A. Oh, I said, "Well, how could you like me so very much with the fact that you had so many relationships with other boys?" She says, she says "That just the last weekend in Baltimore that she went to a party, she was the only girl, and there were about 16 other boys there and she had relations with all of them."

Mr. Kardy: Object, Your Honor, and move that be stricken.

Mr. Forer: May I be heard on the relevance?

The Court: Yes, I will hear you.

Mr. Forer: This is the same thing that, according to the testimony of the defendants, she told them in the woods. We are not offering this as evidence that in fact she was at the party, and in fact this did happen; but this is evidence that she said this.

The Court: Show consent?

Mr. Forer: Beg your pardon?

The Court: To show consent?

Mr. Forer: Yes.

The Court: You want to be heard, Mr. Kardy?

Mr. Kardy: Yes, Your Honor, on the general proposition of law that at the trial this would have been wholly [fol. 38] and totally inadmissible. That prior acts of intercourse with other people would not be admissible in the trial of the case.

The Court: Evidence of chastity?

Mr. Kardy: Yes, Your Honor.

The Court: I am inclined to think the State's Attorney is right, Mr. Forer.

Mr. Forer: Your Honor, we are not introducing this as evidence of chastity or unchastity. One of the issues is: Suppose the person uses some peculiar type of expression—we know people that almost get to be known because of the way they talk, and the witness said so and so, said some-

thing, and the question is, did he say it or didn't he say it? Never known this person in his life, and then you can introduce evidence that this person said this identical thing before—we are offering this not as proof of chastity or unchastity, but as proof that Joyce Roberts had a line, and the line was to brag that she had 16 or 17 other boys a few nights before when she was consenting to intercourse. That is why we are offering the proof. Has nothing to do with chastity or unchastity.

The Court: I am going to sustain the objection and move it out of the record.

Mr. Forer: I didn't hear, Your Honor.

The Court: I sustained the objection, and I will grant the motion of the State's Attorney to move his answer out of the record.

Mr. Forer: All right. May I make an offer of proof?

The Court: Yes.

Mr. Forer: Perhaps the answer we already—I think he may have already answered the question—well, anyway, I offer to prove that Joyce Roberts told him on this occasion that she had had sexual relations earlier that week with 16 or 17 other boys at the party in Baltimore, and that she was getting back into practice.

[fol. 39] CHARLES DAVID CONNOR, was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Scupi:

Q. Would you state your name?

A. Charles David Connor.

Q. Your office address?

A. 5813 Landover Road, Cheverly, Maryland.

Q. Your occupation?

A. Doctor of medicine.



Q. Sometime on or about August 18, 1961, doctor, did you have occasion to see Miss Joyce Roberts professionally?

A. Yes, I did.

Q. Do you know where this was that you saw her?

A. Yes. This was in my office in College Park at that time.

Q. Shortly thereafter, later in August, 1961, did you again see Miss Joyce Roberts professionally?

A. Yes, I did.

Q. Where was this at?

A. I don't have a record of it with my records here. I believe it was Prince Georges Hospital.

Q. Do you recall where, which ward of the hospital this was?

A. I believe it was the emergency room.

Q. This would be on the day that Miss Roberts first came to the hospital?

A. Yes. You probably have a record of that in the hospital records.

Q. Did you see her on any day thereafter at the hospital?

A. Yes. I saw her each day she was in the hospital.

Q. And on the subsequent days could you tell us what part of the hospital you saw her, which ward?

A. I saw her on A Wing, which is the psychiatric ward.

[fol. 40] Q. Did you request Dr. Doudounopoulos to make a psychiatric evaluation of Miss Roberts?

A. Yes. I did.

Q. And did he report to you his evaluation or diagnosis of her case?

A. Yes, he did.

Q. Did you concur with him?

A. Yes, I did.

Q. Could you tell us what that diagnosis or evaluation was?

Mr. Kardy: Just a minute, doctor.

Object, Your Honor.

The Court: Objection sustained.

Mr. Scupi: We would offer to prove, Your Honor, that if the witness were allowed to answer—

The Court: I would admit it if you put it in the right manner.

Mr. Scupi: All right. Excuse me, Your Honor.

By Mr. Scupi:

Q. Could you tell us what your diagnosis of Miss Roberts' condition was at that time?

Mr. Kardy: Object.

The Court: Sustained, unless you lay a foundation.

You trying to show it was based on Dr. Doudoumopoulos' diagnosis, or on his own?

Mr. Scupi: Excuse me, Your Honor.

By Mr. Scupi:

Q. Did you make a diagnosis of your own, independently of Dr. Doudoumopoulos?

A. Yes, I did.

Q. This was from your examinations and conversations with Miss Roberts?

A. Yes.

Q. Could you tell us what your diagnosis of her condition was at that time?

[fol. 41] Mr. Kardy: Just a minute, doctor.

Object.

The Court: Why?

Mr. Kardy: This man has not been qualified yet. He is a medical doctor; he is not a psychiatrist. He is going into psychiatric evaluation of another doctor. We object on that ground.

The Court: Well, of course, you didn't ask to have him admitted as an expert. He is a doctor of medicine, but I take it what Mr. Kardy says—you concede he is a doctor of medicine?

Mr. Kardy: Yes.

The Court: You object on the ground he is not a psychiatrist?



Mr. Kardy: That is correct.

The Court: Objection overruled.

Mr. Senp: Would you read the pending question, please?

(Reporter reads pending question to the witness.)

The Witness: My diagnosis was that she had an adolescent reaction.

By Mr. Scup:

Q. About this time, while Miss Roberts was in the hospital, did you have occasion to discuss her with Montgomery County Police Department officials?

A. I believe I did. I don't recall.

Q. Do you recall where this conversation took place?

A. Yes.

Q. Where was this?

A. An officer came to my office in College Park. Now, I thought he was from the Montgomery County Police; he may or may not have been, I honestly cannot say.

[fol. 42] Q. You say you thought he was from the Montgomery County Police Department. Would you tell us what changed your mind, that now you are not sure he was from Montgomery County?

A. What changed my mind was because the last time I was here I said I thought it was Mr. Whalen that I had talked with. Now, quite possibly it was not. I did not recognize Mr. Whalen, and it has been three years back I talked with someone.

Q. Was the someone you talked to a police officer?

A. Yes.

Q. Was he a plainclothes officer?

A. Yes, he was.

Q. Was he from Montgomery County?

A. I thought he was. He might have been from Prince Georges County. I don't remember now.

Q. Do you recall if you were informed of the interest of this police officer in Miss Roberts; why the police officer was interested—

Mr. Kardy: Object.

By Mr. Scupi:

Q. —in this case?

Mr. Kardy: Object, unless they are going to show and proffer to show it was a Montgomery County police officer; he was in Prince Georges County and she was in Prince Georges County—that being Joyce Roberts.

The Court: Well, I think in the light of his proffer be immaterial whether he was someone he proffers to show was used by the State, Mr. Kardy, whether it was a named police officer, Princes Georges police officer or one from the Congo. I do not think it makes any difference. I will overrule it.

By Mr. Scupi:

Q. Do you recall the question?

A. No, sir. Please rephrase it.

Q. Were you told, did you know the interest that this police officer had in Miss Roberts' case?

A. Yes.

[fol. 43] Q. And what was this interest?

A. The interest was in an incident that had occurred previously.

Q. Do you recall what this incident was?

A. Well, it was the time she was raped.

Q. Did you know whether this rape you are referring to occurred in Montgomery County?

A. No, I did not.

Q. Did you discuss with this police officer what treatment or care Miss Roberts could—should receive in the future?

A. From a medical aspect.

Q. Yes.

A. I told him what I had done.

Q. Did you discuss whether or not Miss Roberts could or should be institutionalized at that time?



A. No, I don't recall whether I discussed with him at that particular time this question or whether I discussed that question later on with someone from—I believe it was the juvenile court here.

Q. You don't recall whether or not you discussed this with the police officer?

A. I don't recall whether I discussed it with him at that time.

Q. Do you recall you discussed with this police officer the circumstances that had led to Miss Roberts' admission to the hospital, the incident that had led to her admission to the hospital?

A. I don't believe I did.

Q. Now, do you recall whether it was before this discussion or afterwards that you had a discussion with a probation officer?

A. I believe it was afterwards that I talked with the probation officer.

Q. Do you know this probation officer's name?

A. No, I do not.

Q. Do you know whether he was from Prince Georges or Montgomery County?

A. I am sorry, I am confused, I can't recall which one it was from.

Q. Do you recall what court he was associated with?

A. Juvenile court is the only thing I can recall.

[fol. 44] Q. Do you recall whether this conversation took place while Miss Roberts was still in the hospital or not?

A. No, she was not.

Q. She had been released from the hospital?

A. I think she had been released from the hospital.

Q. Did you know at the time you discussed her case with this probation officer where Miss Roberts was?

A. Well, she had been released with her mother; I did not know for certainty, but she had been sent home.

Q. Now, with this probation officer from the juvenile court did you discuss the circumstances of the incident that

had led to Miss Roberts being hospitalized in August of 1961?

A. Not any great detail. I discussed her background, I believe, more than the particular incident.

Q. You did mention the incident to the probation officer?

A. Yes.

Q. Would you tell us what incident that had—that you discussed with the probation officer that led to Miss Roberts being hospitalized?

Mr. Kardy: Object.

The Court: He can answer the question "Yes" or "No."

By Mr. Scupi:

Q. The question was: Would you describe the incident?

The Court: I understood you to say "did you discuss with him", didn't you? Read the question.

(Reporter reads from the record.)

The Court: I will reverse myself.

Mr. Kardy, why do you object to that?

Mr. Kardy: He said he didn't talk to her about it, I do not think it is tied up properly at this time, as to date, time, or who he discussed it with, and whether this officer, again, was from Montgomery County or Prince Georges.

[fol. 45] The Court: For the reason I gave before I think it is immaterial who the officer was he discussed it with. He was a lay witness, he testified at the trial. I will permit you to put it in.

Do you understand the question?

The Witness: Please repeat it.

Mr. Scupi: I will rephrase it.

By Mr. Scupi:

Q. Would you tell us what incident led to Miss Roberts being hospitalized in August at the Prince Georges General Hospital?



Mr. Kardy: Now I object to that, Your Honor.

The Court: If he knows.

The Witness: At this stage of the proceeding I'd have to refresh my memory by reading my history and the hospital chart.

By Mr. Scupi:

Q. Do you have that history with you?

A. No, I do not have the history here, I have only my office records.

Q. Do your office records reflect the incident that led to Miss Roberts' hospitalization?

A. No, my office records do not reflect any incident about the hospitalization.

Q. Do you recall what form of treatment she received in the emergency room first time you saw her?

A. If I remember correctly it was gastric lavage.

Q. Does that refresh your recollection as to what led to her being brought to the hospital?

A. Well, yes. She had taken an excessive quantity of some drug. Now, whether it was aspirin, phenobarbital or what, I can't honestly say. I'd have to look at the records at this time.

Q. Do you know whether or not this excessive dosage was taken intentionally by Miss Roberts?

Mr. Kardy: Object.

[fol. 46] The Court: Objection sustained.

You are assuming it was an excessive dose, I suppose it was, but I don't know.

Mr. Scupi: Beg your pardon, Your Honor!

The Court: I sustained the objection. I think you are assuming that it was an excessive dose, aren't you?

Mr. Scupi: Very well, Your Honor.

By Mr. Scupi:

Q. This dosage that Miss Roberts had taken of some drug, was it or was it not an excessive dosage?

A. It was an excess of the usual amount of the medication taken.

Q. Now, from your discussions that you had with the probation officer of the juvenile court, in these discussions did you mention whether or not this dosage was intentionally taken to be an excess of the normal dosage?

A. I don't recall whether I used the word intentional or not.

Q. Whether or not you used the word intentional, doctor, did you use some similar phrase in describing the incident which would convey the impression whether or not it was intentional?

A. Yes, I believe I did.

Q. Do you recall what phrase you used in referring to this incident?

A. I believe I implied that she had probably taken it deliberately.

Q. Now, you said you discussed with the probation officer the history of Miss Roberts. Did you discuss with the probation officer her past sexual experiences?

A. No, I did not.

Q. Did you discuss with the probation officer whether or not Miss Roberts had been involved, in August of 1961, shortly before being admitted to the hospital, in another rape incident besides the one involved here?

Mr. Kardy: Objection, Your Honor.

The Court: Objection sustained.

[for 47] Mr. Kardy: And I might say at this time, I don't want to continue objecting. He has been leading the witness right along. I think you should admonish him to get the proper question. They are leading questions.

The Court: I will rule when they come. Go ahead.

By Mr. Scupi:

Q. Do you recall anything else you said to the probation officer of juvenile court in this conversation?

A. No, I do not.



Q. You do not recall anything else?

A. I recall part of our discussion, but I do not recall anything relative to any sexual activity or rape, other than the initial incident here.

Q. Would you tell us what you recall of the conversation that you had with the probation officer?

A. Am I at liberty to speak freely?

The Court: You haven't claimed any privilege; you can go ahead and answer best you can. The Court rules on them as they occur.

The Witness: The question came up as to what to do with this girl. My whole problem was that I felt she had a bad environment at home; there was a lot of friction between the parents, and that the child was having adolescent reaction and should be removed from this environment. Had they been well-to-do they could have sent her to a relatively stable place or sent her off to a camp, or something of this kind, but these people were not.

In an effort to get her out of the environment and out of this situation, which I felt was morally depressing to her, I suggested that she either be sent to a training school or some State institution where she could at least get help to re-establish her emotional situation.

Now, as far as discussing sexual activity with them, anyone else goes, I did not. It is not within my prerogative to discuss a patient's personal problems, other than insofar as I can help them.

[fol. 48]

By Mr. Scupi:

Q. Is it your recollection, then, that you recommended to the probation officer that she be given some sort of inpatient treatment somewhere?

A. Yes, I did.

Q. Do you recall whether or not the probation officer told you that she already was a patient somewhere?

Mr. Kardy: Object. Leading, Your Honor.

The Court: Objection sustained.

By Mr. Scupi:

Q. Apart from what do you recall what the probation officer said to you in his conversation?

A. No, I do not.

Q. You don't recall anything he said?

A. I don't have any recollection on that, except that he thanked me for my interest, and that was all.

Q. Do you recall whether or not you called him or he called you?

A. He called me.

EVELYN PURDUM, was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Scupi:

Q. Would you state your name, please?

A. Evelyn Purdum.

Q. And your occupation, ma'am?

A. I am clerk of juvenile court.

Q. What county?

A. Montgomery County.

Q. And did you bring with you the records in a proceeding in that court, docket number 160661?

A. Yes, sir.

Q. Involving Miss Joyce Roberts?

[fol 49] (Witness nods head.)

Mr. Scupi: Your Honor, we have a permission from the juvenile court judge—

The Court: Of what?

Mr. Scupi: We have permission from the juvenile court judge to release these records.



By Mr. Scupi:

Q. Do you have those records with you?

A. I do.

Q. Can I see them, please?

A. Yes.

(Papers handed to Mr. Scupi by the witness.)

Q. Are these duplicates or—

A. Original.

Q. I see.

Mr. Kardy: May I see them?

Mr. Scupi: May I see them first?

Indulge me a moment, Your Honor.

(Pause in proceedings while counsel for the petitioners look at papers.)

The Court: Let's see that so-called "permission" of the juvenile court.

Mr. Kardy: Here it is, Your Honor.

(Paper handed to Court by Mr. Kardy.)

Mr. Witt: If Your Honor please, I have the original here. That was the copy I had given to Mr. Kardy.

The Court: This is the record of Joyce Roberts?

Mr. Witt: That is right, Your Honor.

The Court: Gentlemen, I am going to put this in the record. Let the record show that counsel for the petitioners introduced here, or mentioned, and the Court asked to see it, what purports to be the permission of Juvenile Court Judge Alfred Noyes releasing to the Court and counsel [fol. 50] the records of a juvenile, and mark it for purpose of the record, for identification in the record, Petitioners' Exhibit Number 2.

(Petitioners' Exhibit No. 2 was so marked for identification.)

The Court: I take it they are just examining the record. It hasn't been offered yet!

Mr. Kardy: That is right. Just for identification.

The Court: All right.  
Mr. Scupi: At this time the petitioner would offer in evidence as—

The Court: First mark it Petitioners' Exhibit Number 3 for identification.

(Petitioners' Exhibit No. 3 was so marked for identification.)

The Court: It is offered into evidence.

Mr. Scupi: Excuse me, Your Honor, was there—two was an exhibit?

The Court: I wanted to put for the record Judge Noyes' permission.

Mr. Scupi: Yea. After Mr. Kardy examines the record—

The Court: Now the record itself is marked for identification. Mr. Kardy, I take it, wants to look at it.

Mr. Kardy: If I may.

The Court: Then I would recommend you make your motion for introduction into evidence, if you desire to do so. I think it was unseasonably made.

(Pause in proceedings while Mr. Kardy looks at papers.)

Mr. Kardy: We would object to the juvenile court record going into evidence, Your Honor.

[fol 51] The Court: The objection is sustained.

Mr. Witt: Your Honor, in order that we may excuse at this time the deputy clerk from Prince Georges County Juvenile Court, I would like to state for the record the stipulation which we and Mr. Kardy agreed to in your Chambers.

The Court: Let me hear the stipulation. You can confer with Mr. Kardy before you get it. Let's get it straight.

(Off record discussion between counsel for both sides.)



STIPULATION OF COUNSEL

Mr. Kardy: Mr. Witt and myself, by way of a three-way phone conversation with Judge Loveless, who is the Judge of the Circuit Court in Prince Georges County and sits on juvenile matters, discussed the matter of Joyce Roberts with Judge Loveless—(To Mr. Witt), and you correct me if I am mistaken—Judge Loveless said, on April 1st, 1961,

Mr. Witt: April 4th.

Mr. Kardy: April 4, 1961, that Mrs. Roberts filed petition with the Juvenile Court for Prince Georges County; petition being, to the effect, that Joyce was beyond parental control. The matter was turned over to a case worker for the Juvenile Court for Prince Georges County, Maryland. That case worker, by letter in the file dated April 14, 1961, stated in her opinion that Joyce should be put on probation. Thereafter the matter came up for hearing on May 9, 1961. Came up again for hearing May 1st, 1961, and—September 1st, 1961, which nothing is in the file, and there was no hearing. And then on October 9, 1961, the Circuit Court for Prince Georges County, sitting as a Juvenile Court, dismissed the matter before them; stating that the matter was before the Juvenile Court for Montgomery County, and that Prince Georges had no further—any jurisdiction in the matter. So the record, as Judge Loveless stated, the records, the judicial records in Prince Georges County was that Joyce Roberts was never on probation in Prince Georges [fol 52] County from the date of April 4, 1961, until the matter was dismissed on October 9, 1961.

The Court: All right.

Mr. Kardy: You may add to that.

Mr. Witt: That is correct, Your Honor.

The Court: You stipulate and agree that is correct?

Mr. Witt: That is right, Your Honor.

The Court: All right, let the record show it is so stipulated.

(Petitioner's Exhibit No. 2 was so marked for identification.)

The Court: I take it they are just examining the record; it hasn't been offered yet.

Mr. Kardy: That is right. Just for identification.

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LYNN ADAMS, was called as a witness and, having first been duly sworn, was examined and testified as follows:

**Direct examination.**

**By Mr. Forer:**

**Q. Your name is Lynn Adams?**

**A. Yes.**

**Q. And you are a probation officer in the Juvenile Court for Montgomery County, Maryland?**

**A. Yes.**

**Q. Well, just to be certain I ask you if you could refresh your recollection from this file? Let the record show that I am showing the witness Petitioners' Exhibit Number 3 for identification.**

**Q. Now, it is a fact, is it not, a Lieutenant Detective Whalen of the Montgomery County Police Department was also present at that hearing?**

**A. Yes, according to my information it was.**

**Q. It is a fact, is it not, that the charge against Joyce Roberts was that she was out of parental control and living in circumstances endangering her well-being?**

**Mr. Kardy: Object.**

**[fol. 53] The Court: Sustained.**

**By Mr. Forer:**

**Q. Was it brought out at this hearing that Joyce Roberts had attempted to commit suicide shortly before the hearing?**

**Mr. Kardy: Just a minute, Mr. Adams. Object.**

**The Court: Sustained.**



50  
By Mr. Forer:

Q. Do you recall that at this hearing Lieutenant Whalen stated something that Dr. Connor had told him?

Mr. Kardy: (To the Witness) Just a minute. Object.

Q. Now, do not answer the next couple questions until Mr. Kardy has a chance to object.

Do you recall that at this hearing there was a statement to—change the sentence. At this hearing were there statements as to whether or not Joyce Roberts required psychiatric care?

Mr. Kardy: Object.

The Court: Sustained.

By Mr. Forer:

Q. Was it brought out at this hearing that in late August of 1961 Joyce Roberts had accused two men of raping her?

Mr. Kardy: (To the witness) Just a minute. Object.

The Court: Sustained.

Q. The question is: Did you speak, by telephone or otherwise, with a psychiatrist by the name of Dr. Alexander Doudoumopoulos?

A. At what time?

Q. Prior to September 6, 1961?

A. No.

Q. Did you speak with him on September 6, 1961?

A. Yes.

[fol. 54] Q. Was this a telephone conversation?

A. Yes.

Q. Had you spoken to him about Joyce Roberts at any time before then?

A. No.

Q. This was the first and only time you spoke to him?

A. Yes.

Q. Did he give you any information regarding the mental condition or mental health of Joyce Roberts in this conversation that you had with him?

A. Did he—yes, regarding the mental health, yes.

Q. What was the information that he gave you regarding Joyce Roberts' mental health in this conversation?

Mr. Kardy: Just a minute. Object, Your Honor.

The Court: Sustained.

Mr. Forer: I offer to prove, Your Honor, that if the witness were allowed to answer he would testify that Dr. Dondoumopoulos informed him that Joyce needed psychiatric treatment for a couple years; probably at a rate of once a week.

Jesse Dorough, was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Scupi:

Q. Mr. Dorough, are you personally acquainted with Miss Joyce Roberts?

A. Yes, sir.

Q. And going back to 1961, how long had you known her at that time?

A. Period of time. I couldn't really tell you how long it was, but it was some period of time.

Q. Would it be weeks, months, or years?

A. Be months.

Q. Some months?

[fol. 55] (Witness nods head.)

Q. Now, did you see Miss Roberts any time in July, 1961?

A. Yes, I have taken her out a few times and been over to her house. Was a little disturbance over there.



Q. Would you tell us, if you can, the next time you saw her after July 20, 1961?

A. Well, I saw Joyce either the night after, or couple nights later after she had been out to Spencerville.

Q. First of all, how do you know it was a night, couple nights after?

A. Because she said something, "I was raped the night before" and I laughed and said "I don't believe it" because of the way she was talking. So I didn't believe her.

Q. Now, where did this conversation take place with Miss Roberts?

A. Right down—down the street from her house.

Q. Where she was living at that time?

A. Yeah, over on Oglethorpe Street in Hyattsville.

Q. Tell us the occasion for your meeting Miss Roberts on the street; was this accidental or planned to meet her or what?

A. No, I hadn't planned to meet her, but I had gone over there to pick her up and take her out.

Q. Would you tell us the conversation that you had with Miss Roberts on this evening on the street, Oglethorpe Street?

A. Well, I think—I am not too sure I remember the conversation I had, but I'm not sure if I came back and she told me or not, but Joyce said something to me about that she had been raped and they were bigger and better.

The Court: They were what?

The Witness: They were bigger and better than white boys.

Q. Some months?

(Witness nods head)

Q. Now, did you see Miss Roberts any time in July 1961?

A. Yes, I have taken her out a few times and been over to her house. Was a little distance over there. See A.

[fol. 56] LAWRENCE R. WHEELER, was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Witt:

Q. Will you state your name, please?

A. Lawrence R. Wheeler.

Q. Where are you employed, Mr. Wheeler?

A. Detective Sergeant, Prince Georges County Police Department.

Q. Were you so employed in September of 1961?

A. Yes, sir.

Q. Sergeant Wheeler, did you have occasion on September 1, 1961, to interview Joyce Carol Roberts?

(Witness looks at papers.)

A. Yes, sir.

Q. Where did you interview her?

A. Prince Georges General Hospital, Cheverly, Maryland.

Q. In what portion of the hospital?

A. In—on A Wing.

Q. And what wing is that?

A. It is the psychiatric wing.

Q. What caused you to go there to interview her?

A. I had received a report that Miss Roberts had allegedly been raped on or about the 26th of August, 1961.

Q. From whom did you receive that report?

Mr. Kardy: Object. This is after the date of the alleged crime—or rape in this case.

The Court: I think it is permissible; I will overrule it. He can tell.

The Witness: The complaint came to me from the Hyattsville City Police Department who, I believe, originally received it from Mr. John Roberts, her father.



[Vol. 57] By Mr. Witt:

Q. Did you receive copies of the officer's report of the Hyattsville City Police?

A. Yes, sir.

Q. Excuse me?

A. Yes, sir.

Q. Now, when you went to the hospital to interview Joyce Roberts did you take anyone else with you to your interview?

A. A nurse that was on A Wing at the time was present at the time of my interview.

Q. Why did you take the nurse in to the interview?

Mr. Kardy: (To the witness) Just a minute. Object.

The Court: Objection overruled.

The Witness: Any time I interview a female I have someone with me.

By Mr. Witt:

Q. Did anyone at the hospital suggest that you take the nurse with you?

Mr. Kardy: Object.

The Court: Why?

Mr. Kardy: Did anyone—the question was: “Did anyone at the hospital suggest—” we don’t think that is relevant, material, and it is leading.

Mr. Witt: We want to show who else knew about this girl.

The Court: I will overrule the objection. You can answer that “Yes” or “No”, officer.

The Witness: Yes.

By Mr. Witt:

Q. Who suggested it?

A. I believe it was the psychiatrist that I had to get permission from to talk to her.

Q. Did he tell you why you should take a nurse in with you?

[fol. 58] Mr. Kardy: Object.

The Court: You can answer "Yes" or "No".

The Witness: That I don't recall.

By Mr. Witt:

Q. Do you recall anything other than his telling you to take a nurse in with you?

A. Not through the conversation with him. I recall him and, well, I was advised by the staff on the wing that I had to get his permission to talk to her. I made a phone call from the hospital to him; he authorized the interview and suggested that I have a nurse accompany me, have— or someone from the hospital.

Q. Did anyone on A Wing suggest that you take the nurse in with you also?

A. Not that I recall; no, sir.

Q. Will you state the substance of your interview with Joyce Roberts at that time?

Mr. Kardy: Object, Your Honor.

Mr. Witt: Your Honor, this is to show what this police officer knew about this prosecutrix prior to the trial in the case.

Mr. Kardy: The reason for the objection further, Your Honor, this is another case he is investigating, not the case at hand. He wants this officer now to testify what his conversation was about that case.

The Court: Well, I presume your purport to show that statements were made by the prosecutrix that were inconsistent with the statements she made at the trial of this case—

Mr. Kardy: I have no objection if—

The Court: —that the State's Attorney had knowledge and withheld and suppressed?

Mr. Kardy: If it was dealing with this case, and tie it in, I would have no objection. Of course I think my

(Witness resumes the stand.)



objection is proper, because Detective Wheeler has already testified he went to the hospital to interrogate her about [fol. 59] another case, Your Honor, related to this case, and now they ask him to relate the conversation he had with her about that case in August, 1961.

Mr. Witt: Your Honor, it doesn't matter what the conversation was about. We need to know what this police officer knew about this witness that the State used in this case to try these boys here in December of 1961, and I am asking this witness to find out what he knew.

Mr. Kardy: About the Giles-Johnson rape case?

Mr. Witt: Of course.

Mr. Kardy: Well—

Mr. Witt: What he knew about this witness, Your Honor, is relevant to the Giles rape case. This was a witness which the State proffered, and to whose credibility the State vouched by offering her as a witness.

The Court: Proffer to show by his testimony, to prove that the State suppressed or suborned perjury or knew—

Mr. Witt: We offer to prove by this witness, Your Honor, that the State knew material evidence reflecting very seriously upon this witness' credibility, and they withheld that from the defense in violation of the defendants' constitutional rights.

The Court: I will overrule the objection. I will permit it if you proffer that.

By Mr. Witt:

Q. You may answer the question.

A. Would you repeat the question?

Q. The question was: Will you state the substance of your conversation with Joyce Roberts at that time?

A. I questioned her in reference to the alleged occurrence on the night of August 26, 1961. She stated that two subjects had a party in Edmonston, Maryland, Prince Georges County, had had sexual relations with her against [fol. 60] her will, and questioned her as to the degree of whether any threats were made, and to the degree of her

resistance. It was found that one one of the two that had relations with her she offered token resistance; the other one none, and no threats were made.

Mr. Kardy: We object, Your Honor, and move this be stricken. It has nothing to do with this case. It is an entirely separate, distinct case.

Mr. Witt: Your Honor, what he just testified to is a previous charge by this prosecutrix that she had been raped, and those charges, as he just testified, were made to an officer of the State of Maryland—this man—and it is material which we were not informed of, and it is highly relevant; it is crucial.

Mr. Kardy: When you say "you", you weren't in the trial, Mr. Witt.

I say this, Your Honor: This is not prior charges, this is subsequent to the rape of July, 1961. This is a separate and distinct case after July. That is why we are moving it be stricken.

Mr. Witt: Your Honor, charges were made prior to trial, prior to her testimony at the trial, and any charges of rape made by a prosecutrix prior to trial are relevant, so as to affect her credibility, which she charges rape at the trial.

The Court: Read me the answer to that question.

The Reporter: Yes, sir.

(Reporter reads from the record.)

The Court: You purport to show that at the time of the trial, the question of credibility, that the State knew about this?

Mr. Witt: That is right, Your Honor. Rape charges made by her prior to her testimony at the trial of these petitioners.

[fol. 61] The Court: Been here about an hour and forty minutes—clerk just said he wanted a recess. We will recess for 15 minutes and I will rule on it.

Recess

(Witness resumes the stand.)



The Court: Objection is overruled.  
Do you remember the question?  
Mr. Witt: Beg your pardon, Your Honor?

By Mr. Witt:

Q. Detective Wheeler, what further discussion did you have with Joyce Roberts at that time?

Mr. Kardy: Object.

The Court: Objection overruled.

The Witness: I asked her why she had made this complaint. She stated that she hadn't; that she had discussed this occurrence with a friend, I believe it was the day before or two days before, in the hospital, and this friend had relayed this information to her mother, which caused the complaint to be made.

I asked her if she knew the two subjects who had these relations with her. She stated that she did; had known them for sometime. I asked her if she had ever had relations with them in the past. She stated that she had with one. Went into the details of what had occurred; she stated the first instance occurred in the bathroom of the house of the party.

The Court: Officer, said what? It is difficult for me to understand you.

The Witness: I asked her what had occurred. She stated that the first occurrence was in the house at the place of the occurrence in Edmonston in a party she was at, and she stated she had entered the bathroom of this residence one boy had entered the bathroom behind her shutting the door, and proceeded to have relations with her. When asked [fol 52] as to her resistance she stated that she had removed his hands from her body several times and that was the extent of the resistance offered. And the second occurrence happened after leaving the house a few minutes later with the second subject, and occurred in the yard of the residence.

(Witness resumes the stand.)

I asked her why she had offered no resistance. She stated that because she felt that if she had relations with either one or both of these boys that they would tell the rest of the boys at the party and everybody would want to do the same thing. Going into her background, as far as relations with—

Mr. Kardy: We object, Your Honor, going into that. We further object again that this testimony be stricken, as a matter of law, from the record. There was no charge of rape made by Joyce Roberts in this case, there was a complaint by her mother, and she admitted the acts of intercourse, and this is just testimony here of showing subsequent acts of intercourse after the date of the rape charge against the Giles Johnson boys. I argued to Your Honor, made the statement in the first instance, that prior acts of intercourse are inadmissible in a rape case. Certainly prior acts are inadmissible; of course subsequent acts are inadmissible. This would not have been admissible in either of the trials in Montgomery County or Prince Georges County. No charge here. The detective is relating what she told him; just a subsequent act of intercourse, and I again renew our objection and move it be stricken from the record as a matter of law.

Mr. Witt: Your Honor, the testimony of this witness was that Joyce—

The Court: I know what it was. Accusation of rape made.

Mr. Witt: That is right.

The Court: Mr. Kardy, of course he has proffered to show—doesn't show subordination of perjury of the State's Attorney, but this 331 Fed. 2d, 842, Barbee v. Warden, is [fol. 63] a pretty compelling case. I overrule the objection and I deny the motion to move it out of the record.

By Mr. Witt:

Q. Now, will you go on to what you were saying.

A. During this interview she also admitted that she had had relations with other men and boys.



Mr. Kardy: We object and move that be stricken. Jas I

Mr. Witt: Your Honor, this is knowledge—

The Court: Well, I am going to sustain the objection and I move that part out of the record.

Mr. Witt: Your Honor, we—

The Court: Now, you made your point, it seems to me. You have gone into the credibility of this witness; accusation of two men of rape; same breath she said it wasn't rape, that she did it because, apparently—at my words—she was frightened of her mother. Now, that goes to her credibility, and I will consider that. Now, if you are going into her chastity on previous occasion I will sustain any objections to that.

Mr. Witt: Your Honor, this is not to show her chastity. We proffer to show by this witness facts which were known to the State which would sufficiently indicate this girl was mentally ill, suffering from nymphomania.

The Court: So she was suffering from nymphomania. No man has a right to rape a nymphomania. He has no right to rape a prostitute.

Mr. Witt: Of course we do not contend any man has a right to rape a nymphomania, but we contend that if the State has evidence a prosecuting witness is nymphomania it is a mental disorder which affects the witness' credibility which the defense has a right to show the effect of the credibility. The jury would have the right to decide whether or not the witness was credible, but that fact should be before the jury so they can evaluate the witness they have. We don't contend that this girl couldn't have been raped.

[fol. 64] The Court: You are inferring the State is expert on nymphomania?

Mr. Kardy: I'm not, Your Honor.

Mr. Witt: Contending the State had this information, which we proffer to show by expert testimony is indication of nymphomania, and did not make it available to the defense so the defense, on cross-examination, could have

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shown there was serious reason to doubt the words of this witness. The State had evidence that her credibility was extremely doubtful, to say the least. And that is the evidence we are seeking to elicit here.

The Court: Objection sustained.

Mr. Witt: We offer to prove, Your Honor, if this witness were allowed to testify—

Mr. Kardy: We object to these proffers. Your Honor ruled on the objection. We don't think they should go further what subject—

The Court: Mr. Kardy, I will hear his proffer. I am not 12 people—just one, and this is a different type of procedure. I will hear your proffer.

Mr. Witt: We offer to show, Your Honor, if this witness were permitted to testify he would testify that Joyce Roberts admitted at that time that she had had numerous acts of sexual intercourse with many boys and men, many of whom were unknown to her, in the last two years; that is two years prior to that time. She also admitted to acts of—numerous acts of oral sodomy with several boys, and, further, that she had had intercourse for pay. That she couldn't begin to tell them how many men and boys she had had intercourse with because there had been so many, and that several times she had had intercourse with up to six or eight boys at a time at parties.

The Court: All right, your proffer is in the record.

Mr. Witt: Your indulgence for one moment, Your Honor.

(Off record discussion between counsel for petitioners.)

[fol 65] By Mr. Witt:

Q. Now, at the time you interviewed Miss Roberts in August of 1961 did you know that she was a complaining witness in a rape case here in Montgomery County?

A. No, sir.

Q. Now, isn't it correct that you stated previously that you had seen the officer's report from the Hyattsville City Police in connection with this case that you investigated?

A. Yes, sir.



A. Yes, sir. I'd like to correct that a little bit. At that time I had not seen the report. I did not receive the Hyattsville City officer's report until, oh, one or two days later.

Q. And when you received that report were you then aware that she was involved in a rape case here in Montgomery County?

A. No, sir.

Q. Detective Wheeler, I show you the Hyattsville City police officer's report on this case, and I direct your attention to the second paragraph and ask you if that doesn't refresh your recollection as to whether you were aware that she was involved in another rape case?

A. This is not the report that I received.

Q. Did you ever see that report?

A. No, sir.

Q. When did you first learn that she was involved in a rape case here in Montgomery County?

A. I don't recall exactly when it was. I know it was after I talked to her. Just when I couldn't say.

Q. Was it within a matter of weeks, would you say?

A. It was shortly thereafter. I don't know exactly when.

Q. Was it prior to December of 1961?

A. I could not honestly say that long ago.

Q. Well, did you have a discussion with the father of Joyce Carol Roberts?

A. Yes, sir.

Q. When was that?

(Witness looks at papers.)

[Vol 66] A. The afternoon after I had talked with Joyce Roberts. That would have been September the 1st, 1961.

Q. And what did you discuss with him at that time?

A. I had advised him of the finding and the discussion with Joyce. I also advised him at that time that I did not personally feel that there was enough evidence warranting a charge of rape, but I felt that he could charge both subjects, if he so wished to, with contributing to the delinquency of a minor, since they were both over 18 years old.

Q. What did he reply?

A. He stated that since that was the case—I believe he stated to me that she was being committed to the House of the Good Shepherd in Baltimore and he didn't wish any further investigation in the case, and he was advised it would be closed as unfounded.

Q. Did he indicate why she was being committed to the House of the Good Shepherd in Baltimore?

A. Just—I'm not exactly sure. I believe he said something that she had been somewhat of a problem to him as far as correction, had a little difficult time with her, but I don't recall just why he stated that he had this problem.

Q. Did he tell you at that time that she had been raped a month earlier in Montgomery County, and that she was involved in that case?

A. He may have. I don't recall just exactly when it was that I heard this or from whom.

Q. But it was a short time after this interview that you had with her?

A. That I talked to him, or that I—

Q. That you learned she was involved in a rape case?

A. Short time after; I don't know exactly when, whether it was later that day or some little time afterwards.

Q. Did you have occasion to talk to the girl's mother?

A. No, sir.

Q. Did you learn how Joyce Roberts came to be in the hospital at that time?

A. I believe I had been advised that she had taken, allegedly taken an overdose of some kind of tablets. I don't recall being advised of what it was.

Mr. Witt: No further questions, Your Honor.

[fol 67] Cross examination.

By Mr. Keady:

Q. Detective Wheeler, in your investigation your investigation revealed there was no rape case, is that correct?

A. Yes, sir.



Q. And that she consented to the acts of intercourse with the boys?

A. More or less, yes, sir.

Q. And no warrants were issued against the boys in that case?

A. No, sir.

Q. And the complaint was made by Mrs. Roberts, you say?

A. The report from the Hyattsville City Police Department lists the official complainant as Mr. Roberts, the father.

Mr. Kardy: No further questions.

Mr. Witt: No questions.

The Court: Officer, you did talk to Miss Roberts herself, didn't you?

The Witness: Yes, sir.

The Court: And did she say she was raped by these two people?

The Witness: She stated that at the time she didn't especially wish to have intercourse with them, but the only reason for this was that she was afraid the rest of the boys at the party would find out about this and also want to have intercourse. That she had on past occasion, or occasions, I don't recall which, had had relations with one of these two boys.

The Court: And did I understand you to say that she made the complaint of rape because her mother told her to?

The Witness: No, sir. I asked her why she had made this complaint of rape; she said that she didn't, that she had been asked by a friend—I believe it was one of her [fol. 68] boy friends, or an acquaintance in the hospital—one or two days before, why she had taken this overdose, and this is the reason she gave this boy for taking the overdose, and the boy in turn gave this information to her mother without her knowledge. She said she was not making any complaint of rape, and would refuse to testify if a charge was made.

**The Court:** Did you testify at the trial of the petitioners, the Giles brothers, in December, 1961?

**The Witness:** No, sir.

**The Court:** Were you interviewed by the State's Attorney—

**The Witness:** No, sir.

**The Court:** —in relation to the trial of the petitioners in December, 1961?

**The Witness:** No, sir.

**The Court:** Were you interviewed by any of the detectives or police officers of the Montgomery County Police Force?

**The Witness:** No, sir.

**The Court:** Were you interviewed by the Juvenile Court of Montgomery County prior to trial on December, 1961?

**The Witness:** No, sir.

**The Court:** That is all.

**Mr. Kardy:** One further question.

**By Mr. Kardy:**

**Q:** Did any defense attorneys talk to you about the case?

**A:** At a later date Mr. Witt had a telephone conversation with me. This was, I believe, at the time of the petition for commutation of sentence to the governor. I don't exactly recall when this was.

**Mr. Kardy:** No further questions.

**[fol 69] The Court:** Do you want to excuse the officer?

**Mr. Witt:** No, I think we have one more question, if we may.

**Redirect examination.**

**By Mr. Witt:**

**Q:** Do you recall the name of this boy friend that she talked to there?



A. Yes, Hyattsville City police report contains this Robert Bostic. B-O-S-T-I-C.

Q. And it is a result of what she told him that the complaint of rape was made, is that right?

A. Yes. As I gathered it from Joyce, that he had come to the hospital to visit her and ask her why she had taken the overdose, and this is the reason she gave him.

Q. What was the reason she gave him?

A. That she had been raped at this party on the night of August 26.

Mr. Witt: No further questions.

Mr. Kardy: No further questions.

The Court: Now, Detective Wheeler, who made the decision not to swear out a warrant against those two men for rape?

The Witness: The father.

The Court: Well, were those facts presented to the State's Attorney in Prince Georges County before—

The Witness: No, sir.

The Court: The State's Attorney of Prince Georges County knew nothing about it?

The Witness: Not at that time; no, sir.

The Court: Was never reported to him at all, any facts that would have justified a charge of contributing to the delinquency of a minor?

The Witness: He was aware of this case at a later date. Exactly when I don't know. I believe it was upon the [fol 70] petition of the defense for commutation of sentence that he first talked to me about it.

The Court: Do you know whether or not the State's Attorney in Prince Georges County was aware of the facts that you recited from the stand prior to December, 1961?

The Witness: I don't know whether he was or not, sir.

The Court: All right.

Is that all?

Mr. Witt: No questions, Your Honor.

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Mr. Kardy: No further questions.

The Court: That is all.

BARBARA YORK MUSIELAK was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Witt:

Q. Do you know Stewart Foster?

A. Yes, I do.

Q. Is that the same Stewart Foster that was involved in the case of Giles against the State?

A. Yes, it is.

Q. Did you know Stewart Foster in July of 1961?

A. Yes, I did.

Q. Were you aware then that he was involved in an incident on the night of July 20th which occurred on Batson Road involving Joyce Roberts?

A. Yes, I was.

Q. Did you have occasion to hear Stewart describe that incident soon thereafter?

A. Yes, I did.

[fol 71] Q. Approximately when?

A. It was within a week, I am sure. Probably about two or three days afterwards.

Q. What did he say?

Mr. Kardy: Object.

The Court: Come up to the Bench, gentlemen.

(Bench conference off the record.)

(Proceedings resumed in open court.)

The Court: Objection sustained.



Mr. Witt: Your Honor, in view of your sustaining of the objection we offer to prove that if this witness were permitted to testify—

The Court: That she would testify that the defendants at the trial made a statement inconsistent with what she says?

Mr. Witt: That Stewart Foster, one of the two principal prosecution witnesses, made the following statements a day or two—two or three days after the incident: That he and Joyce were parked on Batson Road and some guys came up the road. Stewart had some money on him which he hid in his shoe when he saw them coming. They asked him for a cigarette and he told them to get out of here. They left and returned after several minutes asking for thirty cents to buy a pack of cigarettes. He told them "Get the hell out of here you niggers." Thereupon a fight started.

Now, Your Honor, there are several other matters to which this witness would testify, but I am sure they would come within Your Honor's ruling; that is, they are in the nature of newly discovered evidence, so I think we will just make a proffer as to that also.

The Court: Was this matter, what he discovered, what he proffered to show, was that proffered here on the appeal?

Mr. Witt: Beg your pardon, Your Honor.

[fol. 72] The Court: Was that proffered on the appeal? Did you use that?

Mr. Witt: Yes, this affidavit was the one which we had on appeal in the subsequent case; that is right.

The Court: As newly discovered evidence?

Mr. Witt: That is right, Your Honor.

The Court: All right.

Mr. Witt: We also offer to prove that if this witness were allowed to testify she would testify that Stewart Foster was an extremely belligerent individual; that he'd start fights on numerous occasions without provocation; that he was a notorious bar room brawler, he'd enter a

her room and challenge anyone there to fight, without any provocation, and that—even if he was outnumbered, and that he also habitually used the term black mother fucker—

Mr. Kardy: Of course our objection would go to—

The Court: I sustained your objection.

Go ahead.

Mr. Witt: This was just put in as offer of proof, Your Honor.

The Court: Go ahead.

Mr. Witt: That is all of this witness.

LLOYD M. WHALEN, was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Forer:

Q. Will you state your name, please?

A. Lloyd M. Whalen.

Q. And your occupation is what?

A. Detective Lieutenant for the Montgomery County Police Department.

[fol. 73] Q. You are stationed at Wheaton-Glenmont Sub-station, isn't that correct?

A. That is correct.

Q. You were also stationed there and you were also a lieutenant of detectives on July 20, 1961, is that correct?

A. That's correct.

Q. Were you in charge of the investigation of the alleged rape of Joyce Roberts—

A. Yes, sir.

Q. —on July 20, 1961?

A. Yes, sir.

Q. Lieutenant, it is a fact, is it not, that on September 6, 1961, you attended a hearing in Montgomery County Juvenile Court involving Joyce Roberts?



A. I attended a hearing. I am not sure of the exact date.

Q. Excuse me, the date, in fact, was September 5, 1961, isn't that correct?

A. That is possible, yes, sir.

Q. It was on or about that date, anyway?

A. Yes, sir.

Q. Now, do you recall that at that hearing you stated that Dr. Connor at the hospital said Montrose or Rosewood would be all right?

Mr. Kardy: (To the witness.) Just a minute.

Object.

The Court: Read me the question.

The Reporter: Yes, sir.

(Reporter reads pending question to the witness.)

The Court: What do you want to show by that, Mr. Forer?

Mr. Forer: Beg your pardon?

The Court: What do you proffer to shew by that, the answer you elicit from that?

Mr. Forer: May the witness be excused, or may I state it at the Bench?

The Court: Come up to the Bench.

(Bench conference off the record.)

[fol. 74] (Proceedings resumed in open court.)

The Court: You want to withdraw the question?

Mr. Forer: Yes.

The Court: Let the record show Mr. Forer withdrew the question.

(Proceedings resumed in open court.)

By Mr. Forer:

Q. Let me show you a document in hopes that it may refresh your recollection for the purpose of the next question.

(Papers handed to witness by Mr. Forer.)

Q. At this juvenile court hearing did you report on something that had been said to you by Dr. Connor?

A. No, sir, I have no knowledge of ever talking to Dr. Connor.

Q. Did you report at that juvenile court hearing on something that had been said to you that—on something that had been said to one of your subordinates by Dr. Connor?

A. Not to my knowledge; no, sir. I don't recall it.

Q. You don't recall it?

A. No, sir.

Q. If the juvenile court record had a notation that you reported on a conversation with Dr. Connor, could you explain that?

A. I have no recollection of ever talking to Dr. O'Connell.

Q. Dr. Connor.

A. Dr. Connor.

Q. Do you have a recollection speaking to any doctor about Joyce Roberts?

A. No, sir.

Q. Do you have a recollection whether it was reported to you by anyone working under your supervision, that any of them had spoken to Dr. Connor or any other doctor about Joyce Roberts?

A. No, sir, I have no knowledge of it; other than the doctor at the hospital on the morning of the 21st.

[fol. 75] Q. Lieutenant Whalen, in connection with your investigation of this allegation of rape of Joyce Roberts, prior to the trial did you investigate the records of the defendants, John Giles, James Giles and Joseph Johnson in another trial; did you or anyone working under you?

A. I don't quite understand your question, Mr. Forer.

Q. Did you make any investigation as to the character or record of John and James Giles prior to the trial?

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A. No, sir. We received the FBI record back, that is the only investigation that we made.

Q. That is the only investigation that you—

A. Yes, sir.

Q. Did you make any investigation as to the character or record of Joyce Roberts, the complaining witness?

Mr. Kardy: Object, Your Honor.

The Court: I will overrule it. You can answer that "Yes" or "No", officer.

The Witness: No, sir.

By Mr. Forer:

Q. When I say "you" I mean you or anyone under your who was participating in the investigation for the police department.

A. That is correct.

Q. Your answer of "No" still applies?

A. Yes, sir.

Q. And did you or anyone under your supervision, to your knowledge, make any investigation of the character or reputation of Stewart Foster?

A. No, sir.

Q. Did you receive any information, or did you hear at any time that Joyce Roberts was mentally disturbed or mentally ill?

Mr. Kardy: Object.

The Court: Overruled. You may answer "Yes" or "No", officer.

The Witness: No, sir, I never had any information like that.

[fol. 76]

By Mr. Forer:

Q. Did you hear that Joyce Roberts, sometime in late August, 1961, had attempted to commit suicide?

Mr. Kardy: Object. Leading question.

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Mr. Forer: This is knowledge of a high ranking officer in the Montgomery County Police Department.  
The Court: Objects on the ground it is leading. It is certainly leading.

Mr. Forer: Well, he is an adverse witness.

The Court: Oh, you called him as an adverse witness?

Mr. Forer: Yes indeed, Your Honor.

The Court: Objection overruled.

The Witness: I had knowledge of—she had taken some sleeping pills.

By Mr. Forer:

Q. You also had knowledge that as a result of those pills she went to the hospital, is that correct?

A. I believe the information that I received was that she had taken some pills and was taken to the hospital.

Q. Didn't you receive, whoever you received this information from, wasn't it said—weren't you informed that she had attempted suicide?

A. I don't believe that those exact words were used. They said she had taken a number of sleeping pills.

Q. Who told you this?

A. I'm not positive of who advised me of that, whether it was her mother—I'm not positive who informed me of that.

Q. To the best of your recollection?

A. I can't be sure of who informed me of that. I believe it was her mother; I am not positive.

Q. When this person informed you, didn't she say that Joyce Roberts had attempted to take her life?

A. No, sir, I do not remember that.

[fol. 77] Q. Did you hear that there had been a charge that Joyce Roberts had been raped by two men in August of 1961, just before she took these pills?

A. I received a call from the family stating that the girl had been raped. I asked where it happened; they said Prince Georges County. I advised them to report to the



Prince Georges County, and that is the extent of my knowledge of that.

Q. Didn't you follow up to see what happened to that accusation of rape?

A. No, sir, I did not.

Q. You received this call in August of 1961?

A. I received the call—I am not sure of the date.

Q. Well, at the time you received the call it was represented to you, was it not, that this occurred right after this supposed second rape of Joyce Roberts?

A. Shortly thereafter; yes, sir.

Q. And you knew that there was soon coming up a trial of John and James Giles on charges that they had raped Joyce Roberts on July 20, 1961?

A. Yes, sir.

Q. You knew that, and you made no effort to find out whether or not the second charges, these charges of a later rape were founded or unfounded, or what happened to them?

Mr. Kardy: I object. He already answered the question.

The Court: Let him answer it again. Overruled.

The Witness: No, sir.

By Mr. Forer:

Q. How long have you been a police officer?

A. Twenty and a half years.

Q. I believe that you already told me that you made no effort to investigate the background or character of Joyce Roberts?

A. No, sir.

Q. And even after you heard that she took these pills you made no effort to investigate Joyce Roberts?

A. No, sir.

[fol. 78] Q. Or her background?

A. No, sir.

Q. Now, you did hear, did you, that Joyce Roberts had been in the care of a psychiatrist?

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A. Her mother informed me that she had taken her to see a psychiatrist.

Q. You also heard, didn't you, that the psychiatrist said that Joyce needed treatments and would benefit from it?

A. No, sir, I don't have knowledge of that; no, sir.

Q. Well, let me show you this document again, and hope that, perhaps, may refresh your recollection.

The Court: Mr. Forer, there is no objection to that, but what do you intend to show about that? Probably everyone in the courtroom would profit by psychiatric treatment—without any offense to anyone. What are you trying to show?

Mr. Forer: All I am trying to show he knew she was under a psychiatrist's care and had a psychiatric problem, that is all I am intending to show, and the reason I worded the question as I did was because I have reason to believe that those happened to be the exact words that he heard; that is all. I am interested in showing that this official of the State knew that this girl had psychiatric problems; this girl whom he did not investigate.

The Court: Who doesn't have?

Mr. Forer: Well, if they get to a certain point, the obligation—

The Court: Now you are getting down—can you show she was psychotic?

Mr. Forer: You don't have to show she was psychotic. If she is psychotic she may be incompetent.

The Court: I will let him answer it. Objection overruled.

Mr. Kardy: I haven't even objected yet. I was going to object.

[fol. 79] The Court: My own interpolation. And I meant no offense by saying that probably everyone needed good help all of us a little bit.

Mr. Forer: Thank you, Your Honor.

The Court: Go ahead.

(Papers handed to witness by Mr. Forer.)



By Mr. Forer: That was the last time that she was in the hospital?

Q. I am asking you to take a look at this document. (Indicates) Now, my question is, if I may restate it, weren't you aware that Joyce Roberts had been under the care of a psychiatrist and that the psychiatrist believed that she needed further psychiatric care? Hadn't you heard that?

A. I heard that she was taken to a psychiatrist, but as to the treatment that she received I have no knowledge of that.

Q. And, of course, you didn't trouble to investigate that?

A. No, sir.

Q. And did you ever hear Joyce Roberts in your presence say that she wanted to die and there was nothing to live for?

A. No, sir, not in my presence.

Q. Didn't you ever hear her say in your presence that life doesn't make any difference to her; she does not see any hope of living a happy life?

A. No, sir.

Q. Did you ever hear her say anything like that?

A. No, sir.

Q. Didn't you hear her say that she took 30 Bufferin pills, and in addition took some little pink pills from the medicine cabinet?

A. No, sir. If I may—

Q. Didn't—what?

A. If I may explain. That court hearing I was out of the room.

Q. Were you also out of the room at the time when it was reported that Lieutenant Whalen stated that Dr. Connor at the hospital said Montrose or Rosewood would be all right?

[fol. 80] Mr. Kardy: We object.

Mr. Forer: Withdraw the question.

A. No, sir.

Q. Did you ever hear her say that she was going to die?

A. No, sir.

By Mr. Forer:

Q. Now, Lieutenant Whalen, didn't you investigate the records of Prince Georges County to ascertain whether or not there were any proceedings pending against Joyce Roberts?

A. No, sir, I made no investigation at all.

Q. Lieutenant, I believe you were present at the interrogations of John Giles and James Giles following their arrest, were you not?

A. I was present part of them; not all of them.

Q. Well, they were interrogated separately I believe, is that correct?

A. That is correct; yes, sir.

Q. And it is a fact that you were present at the first interrogation of each one, is that correct?

A. I was present at the first one on James, and I was there sometime later after John had been picked up, but was not present when he was questioned.

Q. At either of those interrogations did you tell John Giles and James Giles that they had a right to remain silent?

Mr. Kardy: Object.

Mr. Forer: Your Honor, bear with me—there is no jury here.

The Court: Well, I will—

Mr. Forer: There is reason for this, it will develop.

The Court: I will overrule the objection. I will permit it. I can't see anything damaging.

The Witness: No, sir.

By Mr. Forer:

Q. Did any of the other officers present at the interrogation tell them that in your hearing?

[fol. 81] Mr. Kardy: Object.

The Court: Overruled. I will permit it.



The Witness: Not in my presence; no, sir.

Mr. Forer: No further questions.

**Cross examination.**

**By Mr. Kardy:**

Q. Lieutenant, there were no proceedings pending against Joyce Roberts in Prince Georges County up to July 21st, 1964, were there?

A. Not to my knowledge; no, sir.

Q. Would you tell Judge Moorman what was the purpose of this hearing on September 6, 1964, in the Juvenile Court here in Montgomery County?

A. The boys in Prince Georges County were harassing the girl, driving back and forth past the house all hours.

Mr. Forer: Just a moment. I object, unless he establishes this is from his knowledge; not from hearsay.

The Court: Do you know this of your own knowledge, officer?

The Witness: I know this is what was reported to me.

**By Mr. Kardy:**

Q. As a result of what was reported to you, Lieutenant, what did you do?

A. I contacted the juvenile court and made arrangements for a hearing.

Q. And what was the purpose of that hearing?

A. Was to place the girl in some place for protective custody.

Mr. Kardy: No further questions.

**Redirect examination.**

**By Mr. Forer:**

Q. Well, who did you contact in the juvenile court to arrange for a hearing?

A. Judge Noyes.

[fol. 82] Q. Did you contact Mr. Lynn Adams at all?

A. No, sir.

Q. Did you tell someone at the juve—did you contact anybody besides Judge Noyes?

A. No, sir. Mr. Lynn Adams was at the hearing when we were there.

Q. In other words, the hearing was arranged by, with Judge Noyes—

A. Through a secretary and Judge Noyes.

Q. Yes. Did you tell Judge Noyes that Joyce Roberts was beyond parental control and a juvenile delinquent as well as a necessary witness for the State?

Mr. Kardy: Object.

Mr. Forer: These are the charges, Your Honor.

The Court: That is within the scope of that question, as to the purpose of that particular hearing, I think; isn't it? I will overrule the objection.

The Witness: I never gave him that information as to she was out of parental control. I gave him the information why we wanted to put her in protective custody, because the people were harassing them so bad at their home.

By Mr. Forer:

Q. Did you tell Judge Noyes that Joyce Roberts at that time lived in Prince Georges County?

A. I am sure I did; yes, sir.

Q. Did you tell Judge Noyes that Mrs. Roberts had told you that she couldn't get any satisfaction out of the Prince Georges County juvenile authorities and that is why she wanted you to help in Montgomery County?

A. No, sir, no. That was not our purpose. She never gave that information.

Q. Lieutenant Whalen, when you testified that you received a call that Joyce Roberts had been raped in August in Prince Georges County, and you said that should be taken up with the Prince Georges County Police Department—



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A. That is correct; yes, sir.  
[fol. 83] Q. —then when you received a call, a later call saying that Joyce Roberts was being bothered by some boys in Prince Georges County, then you went and arranged juvenile court proceedings at Montgomery County?

A. That is correct; yes, sir.

Q. Did you tell Judge Noyes that this girl resided in Prince Georges County?

A. Yes, sir, he had the information where she lived.

Q. Did you tell Judges Noyes that there was a pending proceeding against her in Prince Georges County Juvenile Court?

A. I had no knowledge of anything pending against her there.

Q. Well, before you went to Judge Noyes and asked that a proceeding be instituted against her in the Montgomery County Juvenile Court, didn't you take any steps to ascertain whether there was a proceeding pending against her in Prince Georges County Juvenile Court?

A. I did not.

Mr. Forer: No further questions.

Recross examination.

By Mr. Kardy:

Q. The purpose of your going to see Judge Noyes of our Juvenile Court here in Montgomery County was to place Joyce Roberts in protective custody as a State witness, is that correct?

A. That is correct.

Mr. Kardy: No further questions.

Mr. Forer: No further questions.

The Court: Do you recollect the date that it came to your knowledge that Miss Roberts was taken to the hospital and went to the hospital for taking an overdose of something or another, some drug?

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The Witness: No, sir, I do not recall the date. It was some—

The Court: Can you approximate it?

[fol. 84] The Witness: Rough estimate I would say a month after July 21st. It may be a little bit either way. I'm not positive of the exact date.

The Court: All right, that is all.

HENRY E. COLLINS, was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct examination.

By MR. Witt:

Q. Will you state your name, please?

A. Kenny E. Collins.

Q. Where are you employed Mr. Collins?

A. Montgomery County Police, assigned to the Wheaton-Glenmont Station.

Q. What is your rank.

A. Detective corporal.

Q. Were you assigned there in July of 1961?

A. Yes, sir, I was.

Q. Did you, in July of 1961, have occasion to interrogate John and James Giles?

A. Yes, sir, I did.

Q. Who else was present when you interrogated them?

A. During the interrogation of James Giles there was Detective Kennedy, Sergeant Harding and Lieutenant Whalen. On John it was Detective Kennedy and Harding, and a later time Lieutenant Whalen.

Q. As a result of your interrogation of John and James Giles did you take a statement from them?

A. Yes, sir, we did.

Q. Did you, before you took the statement, tell them that they had a right to be silent?



Mr. Kardy: Object.

The Court: I will permit it. Overruled.

[fol. 85] The Witness: No, sir.

By Mr. Witt:

Q. Did anyone in your presence tell them that they had a right to be silent?

Mr. Kardy: Object.

The Court: Overruled.

The Witness: No, sir.

By Mr. Witt:

Q. Now, approximately what date was this interrogation?

A. Of which one, sir?

Q. Of James Giles?

A. It was on July 21st, 1961.

Q. And of John Giles?

A. On July the 23rd, 1961.

MOTION TO AMEND PETITION AND ORDER GRANTING SAME

The Court: Call your next witness.

Mr. Forer: The Court please, before calling our next witness, I would like to move at this time for leave to amend our petition and I would preface the motion by calling the attention of the Court to Maryland Rule BK 41d, which is relating to post conviction proceedings, which states, and I quote, "Amendment of the petition shall be freely allowed in order to do substantial justice."

The amendment that we wish to make and which involves no contested issue of fact, but only an issue of law, is as follows: To add a new paragraph to our petition, reading, "Petitioners were denied the Assistance of Counsel in violation of the Sixth Amendment to the United States Constitution, made obligatory upon the State by the Fourteenth Amendment, in that at petitioners' trial there was

admitted evidence of statements made by them to the police after their arrests in response to interrogations de- [fol. 86] signed to elicit incriminating statements, although petitioners had not been warned of their constitutional right to remain silent." That is the end of the proposed amendment.

It might be helpful if I pass up a copy to the Court and a copy to counsel for the State, and if I may add one brief explanation as to why we are asking to amend at this time and why it was not in the original petition. This amendment is offered in accordance with the theory of a Supreme Court decision that was decided by the Supreme Court on the last day of the term that has just passed. It is the case of *Escobedo versus Illinois*; it was decided on June 22, 1964, and the advance sheets for that last day have not yet come out, but it is reported in 32 U.S. Law Week 4605; as—I am sorry, this must have come out since Friday. It also appears in 84 Supreme Court Reporter, page 1758. As we interpret that decision, the majority opinion, and the majority opinion was also interpreted by the Dissent, it is now—this is something brand new—a violation of the right to assistance of counsel to interrogate a person under arrest on whom the police have focused as a likely suspect, without his having been warned of his constitutional right to remain silent.

The Court: Mr. Kardy.

Mr. Kardy: Your Honor, I would say this for the record, we object. I know he can amend, and this is the law as I understand it now, the recent rule of the Supreme Court in *Escobedo*, but I want the record to show at the time of this trial on December 4, 1961, and also the September trial in Anne Arundel County in September, I believe 26th, 1962, that was not the law in these United States and was not the law in Maryland at either time, and I want the record to reflect that, so that in no way would we acquiesce in this at all. We want our objection for the record.

The Court: All right, motion to amend will be granted.



[fol. 87] **STEDMAN PRESCOTT, JR.** was called to the stand as a witness and, having first been duly sworn, was examined and testified as follows:

**Direct examination.**

**By Mr. Scupi:**

**The Court:** Mr. Reporter, I want you to show I didn't rule on Mr. Kardy's objection on that; the objection to the motion is overruled and the motion will be granted.

**By Mr. Scupi:**

**Q.** Would you state your name, please?

**A.** Stedman Prescott, Jr.

**Q.** And your office address?

**A.** 8413 Ramsey Avenue, Silver Spring, Maryland.

**Q.** And your occupation, sir?

**A.** I am an attorney-at-law.

**Q.** Now, in December of 1961, were you the attorney, and did you represent during the trial John and James Giles in their trial for rape of a Miss Joyce Roberts?

**A.** I did.

**Q.** Would you tell us whether you were retained or appointed as counsel in that case?

**A.** I was Court appointed.

**Q.** And do you recall approximately when you were appointed, what month?

**A.** No, I don't; I am sure that docket entries would show that.

**Q.** Let me ask you whether or not, Mr. Prescott, you had occasion to visit the home of Miss Joyce Roberts at some time?

**A.** I did.

**Q.** Do you recall when that was?

**A.** No, but it was shortly after I was appointed by the Court.

Q. Did you go alone on that occasion?

A. Did I do which?

[fol. 88] Q. Did you go alone to visit the home?

A. No, Mr. Victor Crawford had accompanied me. He was also an attorney here who was appointed by the Court to represent Mr. Johnson.

Q. Do you recall what day of the week it was that you visited the home?

A. I am sure I can't; it was a working day, however. I believe it was a Friday, but I am not positive of that at all.

Q. By working day, you mean it wasn't Saturday or Sunday, is that correct?

A. That is right.

Q. Now could you tell us what transpired when you went to the home, who did you see and what was said?

A. I saw Mrs. Roberts. We knocked on the door; she came to the door; I also saw, I suppose, Mr. Roberts backing up in the doorway, so to speak. I talked to her; I asked if we could see Joyce; she informed us that Joyce was not at home at the time and wanted to know who we were. We identified ourselves and told her we were Court-appointed attorneys for these boys and would like to discuss the case with Joyce, and she said she didn't think that she should probably talk to us about it, but that she would talk to Lt. Whalen and let us know. We gave her, I believe it was Mr. Crawford's card; I didn't have a card with me, with our phone numbers and asked her to call us. She didn't call us, but I called her.

Q. How much later was it when you called her, how many days would you say?

A. Well, it was only a day or so; I don't recall whether it was the next day or the following Monday.

Q. Could you tell us what she said in that conversation when you did call her subsequently?

A. She told us that she would not discuss the case with us. As I recall she said she talked to Lt. Whalen and he told her not to discuss the case with us.



Q. Now, Mr. Prescott, at the time of the trial in December of 1961, could you tell us what you knew of the background of Miss Joyce Roberts?

[fol. 89] A. I knew very little of the background. I knew what the Giles boys had told me she told them at the time this incident had occurred.

Q. Apart from what your clients told you, would you tell us whether you had any other information?

A. No, we attempted to obtain the records of the Juvenile Court, both here in Montgomery County and Prince Georges County, but they were not released to us. We were not able to see those.

Q. Mr. Prescott, at the time of the trial in December of 1961, did you have any information that Miss Joyce Roberts had attempted to commit suicide in August, 1961?

A. No, sir.

Q. At the time of the trial in December of 1961, did you have any information that Miss Roberts had in August and September, 1961, been in a psychiatric ward of Prince Georges General Hospital?

A. No, sir.

Q. At the time of the trial, did you have any information that Miss Joyce Roberts, the prosecutrix, had been diagnosed by a psychiatrist as having a mental illness?

A. No.

Mr. Kardy: Object to that, no testimony to that here. I don't know whether adolescent reaction is mental illness. Object.

The Court: Objection overruled.

The Witness: No, sir, I had no knowledge of it.

By Mr. Scupi:

Q. Did you have any information at the time of the trial that in September and October, 1961, Miss Roberts had been in Montrose during September and October?

A. No, sir, I had no knowledge of that.

Q. Did you have any information to corroborate the fact that in July, 1961, there were Juvenile Court charges pending in Prince Georges County against Miss Roberts?

A. No, sir. As I say, we were unable to obtain those records. We had hearsay to that effect, but that is all.

[fol. 90] Q. By hearsay, Mr. Prescott, you mean the information from your clients?

A. From my clients, yes.

Q. Apart from what your clients told you, Mr. Prescott, did you have any information at the time of the trial that Miss Roberts was, shall we say, a promiscuous woman and—

Mr. Kardy: Object.

The Court: Objection sustained.

By Mr. Scupi:

Q. Did you have any information at the time of the trial to verify the fact that Mr. Stewart Foster, State's witness at the trial, was, in fact, a notorious brawler?

Mr. Kardy: Just a minute, Mr. Prescott. Object.

The Court: Sustained.

By Mr. Scupi:

Q. Did you have any information at the time of the trial that Stewart Foster had, a day or two after the alleged rape, given an account of the incident in his home to his family and friends which contradicted the account that he gave at the trial?

Mr. Kardy: Object.

The Court: Overruled.

Mr. Kardy: Object.

The Witness: No.

Mr. Kardy: Object as leading.

The Court: All right, move it out of the record. I will reverse myself. You may give me the reason.

The Witness: That is correct, Your Honor.



You want to rephrase the preceding question?

Mr. Scupi: Yes, Your Honor.

[fol. 91] By Mr. Scupi:

Q. Did you have any information that Mr. Stewart Foster had given prior inconsistent accounts of the events of July 20, inconsistent with his trial testimony?

A. No, sir. I had no information to that effect.

Mr. Scupi: Thank you. That is all we have, Your Honor.

Cross examination.

By Mr. Kardy:

Q. Mr. Prescott, how long have you practiced law and been a member of the bar of the State of Maryland, Sir?

A. Since 1946.

Q. And since that time to the present time, have you served in any official capacity in the State of Maryland?

A. I have been an Assistant Attorney General and also the Deputy Attorney General of the State.

Q. Mr. Prescott, after your appointment as counsel for the Giles boys in this case, did you come to see me, as State's Attorney, to discuss the case?

A. I did.

Q. And would you relate to His Honor what that discussion consisted of and what, if anything, I let you see and have in the case?

A. You let me have your entire file as I recall. I don't recall the discussion that you and I had; I think you did tell me that you had been over this case quite carefully with Joyce and were of the opinion that she was telling you the truth about the matter.

Q. And by the entire file, did I let you read the police report in its entirety, sir?

A. You did.

Q. Mr. Prescott, you said you made efforts in Montgomery County and Prince Georges County in regard to the Juvenile Court, so on that basis you know there was some action or proceeding in both jurisdictions?

A. No, they didn't even go so far as to tell me that; they just told me that I could not have the records that they had there. The information I got concerning that came from the Giles boys themselves.

[fol. 92] Mr. Kardy: No further questions, Your Honor.

Mr. Scupi: Indulge me a moment, Your Honor.

(Off the record discussion between counsel for the defendants.)

Mr. Scupi: I have another question, Your Honor.

Redirect examination.

By Mr. Scupi:

Q. Mr. Prescott, you have referred to the information you had from your clients with respect to Juvenile Court charges pending against Miss Roberts; could you tell us what that information was that you got from your clients?

A. Well, I think it shows in the record, I don't know. What they told me was that when they first went up with Joyce that she had suggested that they have intercourse with one another; that she had told them that if anything happened, she would have to claim she was raped because she was on probation from the one of the Juvenile Courts, and I think the record discloses that.

Mr. Scupi: Thank you.

Mr. Kardy: No further questions.

Mr. Scupi: No further questions.

The Court: Mr. Prescott, I understood you to say that Mr. Kardy, while you were preparing for the trial and before trial, let you see his complete file, including the police reports?

The Witness: That is correct, Your Honor.



**The Court:** And you are satisfied that Mr. Kardy did show you the police reports, which he didn't have to do?

**The Witness:** Well, I am not sure he didn't have to, but he did show them to me, Your Honor.

**The Court:** Well, were these police reports introduced in evidence?

[fol. 93] **The Witness:** Not to my knowledge. The police officers testified themselves, Your Honor.

**The Court:** Now do you have any knowledge that you could give the Court that in relation to the allegations of the petitioners that certain witnesses perjured themselves with the knowledge of the State's Attorney? Do you have any knowledge that any witnesses did perjure themselves with the knowledge of the State's Attorney?

**The Witness:** No, Your Honor, I don't have any such knowledge.

**The Court:** Do you have any knowledge, Mr. Prescott, that the State's Attorney suborned perjury?

**The Witness:** No, sir.

**The Court:** Do you have any knowledge that would help the Court that would reflect that the State's Attorney knowingly suppressed evidence which would have been beneficial to the defendants?

**The Witness:** No, I don't have any personal knowledge of that, Your Honor.

**The Court:** All right; thank you.

**MARION ROBERTS** was called to the stand as a witness and, having first been duly sworn was examined and testified as follows:

**Direct examination.**

**By Mr. Witt:**

**Q. Will you state your name, please?**

**A. Marion E. Roberts.**

**The Witness:** That is correct, Your Honor.

Q. And your address?

A. 3803 Oglethorpe Street, Hyattsville, Maryland.

Q. Are you the mother of Joyce Carol Roberts?

A. I am.

[fol. 94] Q. Is that the same Joyce Carol Roberts that was involved in the case of State versus Giles?

A. Yes.

Q. Now, Mrs. Roberts, on or about August 26, 1961, did anything unusual happen in your family?

Mr. Kardy: Object.

The Court: Overruled.

The Witness: I don't know the date of anything unusual happening except—

The Court: All right, she has answered the question.

Mr. Witt: Your Honor, may it be recognized that this is an adverse witness?

The Court: What?

Mr. Witt: May it be recognized that this is an adverse witness?

The Court: Do you have anything to say, Mr. Kardy?

Mr. Kardy: They have called her as their witness. She hasn't said anything yet except her name.

Mr. Witt: Well, Your Honor, there may be the necessity for a little bit of leading with the witness. I ask that it be recognized that she is adverse.

The Court: All right, go ahead.

Mr. Witt: Thank you.

By Mr. Witt:

Q. Do you recall an occasion on or about August 26, 1961, when Joyce was taken to Prince Georges County Hospital?

A. No, I was not.

Q. Not you, Mrs. Roberts, Joyce.

A. Oh, Joyce.



Q. Yes.

A. Joyce did not call me.

Q. No, the question was do you recall an occasion when Joyce was taken to Prince Georges County Hospital in August—

A. Yes.  
[fol. 95] Q. —of 1961? What was the occasion for her being taken there?

A. Well, she said she took some pills.

Q. Now did you have any discussion with her doctor at that time about whether she should come home after being hospitalized?

A. Yes.

Q. And will you tell us what this discussion was?

Mr. Kardy: I object.

The Court: Objection sustained.

The Court: You will have to call the doctor.

By Mr. Witt:

Q. Did you decide that Joyce should not come home from the hospital, or should be sent some place for safekeeping?

Mr. Kardy: Object.

The Court: I will overrule it.

The Witness: No, I didn't decide.

By Mr. Witt:

Q. Did someone decide?

A. Yes.

Q. Who decided?

A. The doctor.

Q. Did you agree with his decision?

Mr. Kardy: Object.

The Court: Overrule it; you can answer that question yes or no.

The Witness: Yes.

By Mr. Witt: The Court: Well, if you know of the Court's knowledge how the decision was carried out, what would you say? Q. Now will you tell us what you did in order to carry out that decision?

Mr. Kardy: Object.

The Court: Objection overruled.

The Witness: What I did?

[fol. 96]

By Mr. Witt:

Q. Yes, ma'am.

A. I didn't do anything.

Q. Do you know how that decision was carried out?

A. Yes.

Mr. Kardy: Object.

The Court: Why, Mr. Kardy?

Mr. Kardy: Because the doctor is the best witness in this case, and getting back to what decision was made and did she agree with the doctor's decision, I think it's all objectionable. They ought to have the doctor here.

The Court: Mr. Reporter, read the question and answer.

(Reporter reads from the record.)

The Court: She has answered the question. Objection be overruled.

Mr. Witt: Will you tell us then how it was carried out?

The Court: If she knows of her own personal knowledge. Now, counsel, I want you to keep away from hearsay. You know better than that. There is no reason why the Court should sit up here time after time letting you do that. Let's keep that out. If she knows of her own personal knowledge how it was carried out, she can testify to it.

By Mr. Witt:

Q. Will you tell us how it was carried out?

The Witness: Judge Moorman, may I say a word right here?



The Court: Well, if you know of your own personal knowledge how the decision was carried out, what was done, if anything. The form of your question is, I think, a bit confusing, being he is asking a question.

Just a moment. If you know of your own personal knowledge, as distinguished from what someone told you, [fol. 97] Mrs. Roberts, then you may go ahead and explain it. You have answered the question, "Yes," that you did know.

The Witness: Well, the doctor told me and—

The Court: All right, that is enough. She doesn't know of her own personal knowledge.

By Mr. Witt:

Q. Well, were you aware there was a proceeding in Montgomery County Juvenile Court to commit Joyce to Montrose School for Girls?

Mr. Kardy: Just a minute. Object, Your Honor.

The Court: I think she can answer that yes or no. Overruled.

The Witness: Yes.

By Mr. Witt:

Q. Were you present at that proceeding?

A. Yes.

Q. Now prior to that proceeding, did you have any conversations with Lieutenant Whalen of the Montgomery County Police Department?

A. Not that I remember.

Q. Are you sure about that?

(No response.)

Mr. Witt: My question was, are you sure about that?

The Witness: No, I am not sure.

By Mr. Witt:

Q. So you may have had some discussion with Lieutenant Whalen?

A. I didn't have any discussion, I don't think.

Q. Did you talk to him?

A. I have spoken to the man, of course.

Q. Did you talk to him before that proceeding?

A. Yes, once.

[fol. 98] Q. Did you talk to him about instituting that proceeding, about starting that proceeding?

A. The proceeding of getting Joyce into the school?

Q. Yes.

A. Oh, yes.

Q. Will you tell us what you told him in that conversation?

A. I told him that since the incident of July the 20th, that the place had just been a bedlam; there were carloads of people coming by and harassing us night after night and we would have to stand guard, my two sons and my husband and myself, get tag numbers, get identifications, and I asked him what we could do and what we should do to put Joyce in a place where she would not be harmed.

Q. Did you tell him that you had raised a problem with the Prince Georges County Police first?

Mr. Kardy: Object. We are going now, Your Honor, from September or October, 1961, back to April of 1961.

Mr. Witt: No, Your Honor.

The Court: Well, I don't see where that question could be so vicious as to hurt anything. I will overrule the objection. You may answer.

The Witness: What was the question again?

Mr. Witt: Would the reporter read the question?

(Reporter reads from the record.)

The Witness: No. This problem was not concerning the Prince Georges Police. These incidents happened be-



cause of the incident of July the 20th, and that is why we were being harassed.

By Mr. Witt:

Q. Where was Joyce living at this time, in what county?

A. In Prince Georges County.

Q. Didn't you, in fact, speak with the Prince Georges County Police?

A. I called the police night after night to come up there.

[fol. 99] Q. They didn't do anything for you?

A. Yes, they did.

Q. What did they do?

A. They came up there night after night, and they caught people.

Q. Didn't you tell them that you wanted Joyce to be somewhere away from home?

A. No, I did not.

Q. Now it's a fact, isn't it, that you had already filed a charge against Joyce in Prince Georges County, isn't it?

Mr. Kardy: Object.

The Court: What do you want to put that in for?

Mr. Witt: May we approach the bench, Your Honor?

Mr. Kardy: No jury, I don't see why we have to approach the bench.

The Court: No jury, but on the merits of your case, I can't see what that has to do with the charge of rape. Come up here; I will talk to you.

(Off the record bench conference.)

(Proceedings then resumed in open court.)

The Court: I will sustain it as to the form of the question.

By Mr. Witt:

Q. It's a fact, isn't it, Mrs. Roberts, that you had previously initiated proceedings in the Prince Georges County Juvenile Court against your daughter, is it not?

Mr. Kardy: Object.

The Court: The form of the question, of course, there would be no doubt if there was a jury on there. It's not affecting me particularly, but I will sustain it technically as to the form.

By Mr. Witt:

Q. Did you sign a petition in the Juvenile Court for Prince Georges County alleging that your daughter was beyond your control?

[fol. 160] Mr. Kardy: Object.

The Court: I will sustain it. Let me ask her a question. You may object if you like; it just may be overruled though. You can record your objections.

The Court: Mrs. Roberts, at about the time you are speaking of, had you petitioned the Court for the purpose of determining whether or not your child was a delinquent child?

The Witness: No.

By Mr. Witt:

The Court: I have ruled on it.

Q. You did not make such a petition on April 4, 1961?

Mr. Kardy: Object. She has already answered the question.

The Court: I will permit her to answer. Overruled.

The Witness: No.

By Mr. Witt:

Q. Did your husband?

A. No.

Q. Did anyone in your family?

A. No.

Mr. Witt: Mr. Reporter, may I have the Judge's question read back?

The Reporter: Yes, sir.

(Reporter reads from the record.)



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By Mr. Witt: of July the 20th 1931, Mr. Kardy.

Q Had you, in April of 1931, petitioned the Juvenile Court of Prince Georges County for the purpose of determining whether your child was beyond your control?

Mr. Kardy: Object.

The Court: I am going to sustain the objection as to form, Counsel; the form of your question here. This prosecutor and these parents have some rights too, and the interpretations, the way they come off, the way the questions are put—I will sustain it as to form. I see what you are [fol. 101] trying to get at, but try to get it in some—it doesn't bother me, but the interpretations put on this by other well-meaning people, I think you ought to respect the rights of this family. You are assuming she was beyond her control. Now, I don't think you have any right to shame her in the presence of the United States—this County here, to create the impression that justified rape, or beyond her control, or what. I will sustain it as to form. See if you can do it.

Mr. Witt: With Your Honor—

The Court: I have ruled on it. You can put the question again.

Mr. Witt: May I state, Your Honor, the question was in the same form that Your Honor had put it?

The Court: I thought I had led her right into "as a delinquent." That is why I did it.

Mr. Witt: The petition we have seen states—

The Court: I don't know what it states. Now put it in evidence now and introduce it if you want to.

Mr. Witt: Your Honor prohibited us from doing that.

The Court: No, I didn't—prohibited what?

Mr. Witt: Prohibited the introducing into evidence of the petition that was filed against this woman's daughter in Prince Georges County.

Mr. Kardy: Never been offered, Your Honor. Stipulated it's a fact, isn't it, Mrs. Roberts, that you had previously instituted proceedings in the Juvenile Court against your daughter?

The Court: No evidence it had ever been offered before the Court, and as I recollect it, there was a stipulation here yesterday on that score.

Mr. Kardy: That's right. We both talked to Juvenile Judge Lovelace.

The Court: It has never come before the Court. Get along with your questioning. Overrule it as to form. Let's stop this quibbling.

[fol 102] By Mr. Witt:

Q. Had you had any discussions with the Probation Officer in Prince Georges County regarding your daughter?

Mr. Kardy: Object.

The Court: Overruled.

Mr. Kardy: As to what time, Your Honor.

The Court: Overruled. Answer yes or no, then you can put the time in.

The Witness: Yes.

By Mr. Witt:

Q. When?

A. I don't remember the date.

Q. Was it before July 20, 1961?

A. Yes.

Q. In what connection did you have those discussions?

Mr. Kardy: Object.

The Court: Overruled.

(Pause.)

The Witness: In what connections—

The Court: Do you understand the question, Mrs. Roberts?

The Witness: Well, there are several connections; I mean the only thing—I had discussions with this Probation Officer, a woman that I knew, a friend; my oldest son was in the conversation and there was nothing that would petition—we signed no petition or anything to the effect



that Joyce was a delinquent child. It was a discussion, and the reason I went to her was I wanted to know what I should do in case Joyce continued to stay out later than what I had given her a time limit on. I had given her a time limit of what time to come in, and on several occasions she had disobeyed the time limit, and that was what my discussions were about.

[fol. 108] By Mr. Witt: ...

Q. Subsequent to that discussion, was any petition filed against Joyce in the Prince Georges County Juvenile Court?

A. No.

The Court: Counsel, did you and Mr. Kardy—correct me if I am wrong about this—but I understand you stipulated yesterday that that very petition was filed.

Mr. Witt: That's right, Your Honor; it's in the record there was such a petition filed. These questions are merely preliminary to her discussion.

The Court: All right.

By Mr. Witt:

Q. Now going back to your discussion with Lieutenant Whalen at the time just prior to Joyce's commitment to Montrose, what did you tell him about Joyce's situation in Prince Georges County?

A. I just told you awhile ago what my discussion with him was about, that is, the place was becoming a bedlam of terror, that we couldn't get any sleep from night to night; that was my discussion with him.

Q. Did he suggest that you see the Prince Georges County authorities with regard to that problem?

Mr. Kardy: Object.

The Court: Overruled.

The Witness: This was not an incident coming from Prince Georges County.

Mr. Witt: I didn't ask that. I asked if he did he suggest that you see the Prince Georges County authorities?

The Witness: He suggested to call the Hyattsville Police, which I had done time after time, and they could do nothing about the situation until I got tag numbers and identifications.

[fol. 104]

By Mr. Witt:

Q. Did you tell Lieutenant Whalen that the Hyattsville Police could do nothing about it?

A. No, I don't believe I went into detail about them not being able to do anything about it. They could do something about it and they did.

Q. Did you tell Lieutenant Whalen that you had spoken to the Probation Officer in Prince Georges County?

A. I don't know whether I went that far back or not, no. I don't think so.

Q. You might have?

A. No, I don't think so.

Q. Well, what, if anything, did you tell him about the Prince Georges County Juvenile Court and Joyce's involvement there?

Mr. Kardy: Object. She has already answered that two or three times.

The Court: Overruled. Let her answer it again.

The Witness: I don't know what you mean by Montgomery County Police, and he knew all about what happened in Montgomery County, I believe.

By Mr. Witt:

Q. In Prince Georges County you mean?

A. Prince Georges. I believe you said Montgomery, didn't you?

Q. No, Prince Georges County.

A. Nothing going on in Prince Georges County until after the July incident. Everything was peaceful and quiet with us.



Q. Are you aware that there was a petition against your daughter, dismissed on October 9, 1961, in Prince Georges County Juvenile Court?

(Pause.)

A. Yes.

Q. What was that petition?

Mr. Kardy: Object.

[fol. 105] The Court: Overruled.

The Witness: I don't know of any petition really as far as that is concerned, but this was after the incident of July the 20th; everything happened after that. I don't know what you are referring to, but—

Mr. Witt: I am referring to the petition that you know was dismissed on October 9, 1961.

The Witness: I don't know of—I don't recognize the date.

Mr. Witt: That's right. Your Honor might instruct.

By Mr. Witt:

Q. Didn't you just testify that you knew?

A. I remember a petition being dismissed, but I don't remember anything about the date.

Q. Now what was that petition?

(Pause.)

A. I don't recall the date, myself.

Q. I didn't ask the date. I asked what the petition was.

(Pause.)

Mr. Kardy: If you know, Mrs. Roberts.

(Pause.)

The Witness: I don't know what petition you are referring to. You have been referring to so many.

Mr. Witt: I am talking about the petition which you said you knew was dismissed on October 9, 1961. What was that petition?

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A. You have been calling things petitions, and I have been agreeing that they were dismissed; you referred back to April of a petition, and it was no petition.

Q. Well, when—

A. And you referred to Joyce being put away in a petition.

[fol. 106] Q. Why don't you just tell me what this—so we can straighten it out, why don't you tell us what the petition was? You said you knew it was dismissed on October 9th.

A. I don't remember what petition you are referring to.

Q. I am asking you what petition you were referring to?

A. I am referring to several petitions.

Q. Well, what are those several petitions?

A. I just related.

Q. I don't believe you have. Will you tell us what several petitions are you referring to?

(Pause.)

The Court: Can you answer that, Mrs. Roberts?

The Witness: I don't know, actually. He has referred to petitions before, and he insinuated that Joyce has petitions for this, and I signed petitions for that, and I don't know whether he is referring to the petitions that put her into Montrose, or whether that was dismissed, or just what petition he is referring to.

The Court: Do you know what the contents of the petitions were that were the subject of the date of October 9, 1961?

The Witness: I don't—I honestly do not remember the date and just what petitions he is referring to as to that date.

The Court: Now Counsel asked you what you know about the other petitions that you do know about. Now if you understand it, you can tell him.

(Pause.)

The Court: Can you refer to it?



(Pause.)

The Witness: No, I honestly cannot.

[fol. 107] The Court: All right; ask her another question.

By Mr. Witt:

Q. You say there are several petitions involved and one of them was the one on which Joyce was sent to Montrose here in Montgomery County?

A. At my request, yes.

Q. Now, can you tell us what the other petitions were?

A. You referred to a petition back in April; that was supposed to be pending up until October.

Q. Will you tell us what you know about that petition?

A. I discussed that awhile ago, that I had a discussion with the Probation Officer.

Q. It was in connection with that petition that you had the discussion with the Probation Officer, is that right?

A. Yes.

Q. Now did you know how that petition came to be filed?

A. I had a discussion with the Probation Officer, but I didn't sign any petition.

Q. You know who did?

A. No.

Q. Now with respect to that case, the case about which you had a discussion with this Probation Officer—by the way, was that Probation Officer Miss Patterson?

A. It was.

Q. Now in connection with that case—with reference to that case, will you tell us what you told Lt. Whalen about that case?

A. I don't remember telling Lieutenant Whalen anything about that case.

Q. I am going to show you the transcript of testimony that you gave on deposition in this case and ask if it doesn't refresh your recollection with respect to what you told Lieutenant Whalen. Question: "Did you tell Lt. Whalen that Joyce had taken pills and tried to kill herself?" There

was an objection which was overruled, and you answered, "Yes."

A. I—

Mr. Kardy: For the record we are going to object, for the record in this case, the improper use of the deposition. [fol. 108] To further our objection that this, the deposition, should not have been permitted to have been taken in this case, for the record.

The Court: Objection overruled; for the record.

The Witness: I remember telling him that she took pills, but if you asked me the question about trying to kill herself, I don't know as if she tried to kill herself. I have no idea.

By Mr. Witt:

Q. When did you tell him that?

A. When did I tell him that?

Q. Yes.

A. I don't remember. I think it was before—that I came over here to ask for help; to get Joyce put away somewhere where she would not be harmed by the people that were coming past our house every night throwing bottles and fire crackers, breaking into the house, and breaking glass, breaking into and stealing things from my house.

Mr. Witt: Your indulgence one moment, Your Honor.

(Off the record discussion between counsel for the defendants.)

Mr. Witt: We have no further questions, Your Honor.

Cross examination

By Mr. Kardy:

Q. Mrs. Roberts, as a result of your daughter being raped on July 20, 1961, thereafter you and your family were subjected to much harassment; is that not correct?



Mr. Witt: Object, Your Honor, that is beyond the scope of direct examination.

The Court: Objection overruled.

Mr. Witt: It's also entirely irrelevant.

The Court: Objection overruled.

[fol 109] The Witness: Yes.

By Mr. Kardy:

Q. You were subjected to much harassment?

A. Yes.

Q. As a result of that continued harassment at your home that you and your family were subjected to, you called Lieutenant Whalen and asked him to—

Mr. Witt: Object to Mr. Kardy testifying, Your Honor.

Mr. Kardy: This is cross-examination; it's their witness. I didn't call her.

Mr. Witt: Adverse to us, Your Honor.

The Court: Cross-examination, Counsel, overruled.

By Mr. Kardy:

Q. As a result of your family be subjected to much harassment as a result of this rape that occurred on July 20, 1961, you called Lieutenant Whalen and asked for help, did you not?

A. I did.

Q. And as a result of that Lieutenant Whalen arranged the hearing before Judge Noyes in Montgomery County in September, October, 1961, is that not a fact?

A. That is right.

Q. And as a matter of fact, she was placed in Montrose in protective custody; she was not committed there, or not put there because of any emotional disturbance, or anything else, isn't that a fact?

A. That is right.

Mr. Forer: Object. She is in no position to know.

Mr. Kardy: She answered it. Thank you. Your witness.

Redirect examination.

By Mr. Witt:

Q. Now Mrs. Roberts, were you present?

The Court: Wait a moment now, just a moment. Counsel interposed an objection, I suppose, incorporating a motion to strike.

[fol. 110] Mr. Witt: No, Your Honor.

The Court: All right. You withdrew the objection, Mr. Forer?

Mr. Forer: Yes, Your Honor.

By Mr. Witt:

Q. Now were you present at the hearing at which Joyce was committed to Montrose?

A. Yes.

Q. And did you hear all of the discussions at that hearing?

A. I did.

Q. And did you hear the discussion with respect to Joyce's mental condition at that time?

Mr. Kardy: Object.

Mr. Forer: Your Honor—

Mr. Witt: Your Honor, he has opened the door; he discussed the reason why this girl was committed, and opened the door.

Mr. Kardy: I just said the purpose of the hearing; didn't go into the hearing.

The Court: I think you have. Objection overruled.

The Witness: Repeat the question.

Mr. Witt: Would you read the question, Mr. Reporter?

(Reporter reads from record.)

The Witness: There was no discussion of her mental condition, I don't believe.

(Proceedings resumed in open court.)

The Court: Objection sustained.



Mr. By Mr. Witt: Your Honor, maintain the scope

Q. When the Judge—were you present when the Judge ordered her committed to Montrose?

A. I was there when he said that she should go to some school.

Q. Do you recall that he specifically stipulated that her commitment was to be with permission to transfer her to any other State institution in Maryland?

A. I don't remember that.

[fol. 111] Mr. Witt: May we have Petitioners' 3 for identification?

(Clerk hands Mr. Witt papers.)

Mr. By Mr. Witt: Mr. Kardy, you are going to object.

Q. Now I show you from Petitioners' Exhibit 3 for identification the legal file of that proceeding and show you where it states Joyce Roberts is—

Mr. Kardy: Just a minute, we object. This has been offered for identification; the Court ruled that this is not—

The Court: Objection sustained.

Mr. Witt: Your Honor, I can refresh her recollection with Exhibit not in evidence.

Mr. Kardy: Object.

The Court: Objection sustained. She didn't make it. She hasn't seen it.

Mr. Witt: She has testified that she doesn't recall, Your Honor, and I am attempting to refresh her recollection with an Exhibit marked for identification.

The Court: As to what she said or what Judge Noyes said?

Mr. Witt: As to what was said in her presence, Your Honor.

The Court: Come up to the bench. Let me see the Exhibit.

(Off the record bench conference.)

(Proceedings resumed in open court.)

The Court: Objection sustained.

**Mr. Kardy:** Thank you, Your Honor.

**The Court:** Put this on the record, he opened the door and put it in the record that is true; that is why I am permitting you to proceed with a broad scope, but you have got to do it in accordance with the rule of evidence. It's [fol. 112] not what I think or you think. If I had my way, just like counsel, I would repeal a lot of laws that I don't like, but we have got to abide by them. We are still a Government governed by rules, Gentlemen. Of course, I am not telling you something you don't know, but let's not try to pull my leg. Go ahead. Strike "pull my leg," if you will, Mr. Reporter.

**By Mr. Witt:**

**Q. Mrs. Roberts,** was there concern expressed at that hearing regarding Joyce's mental condition?

**Mr. Kardy:** Object.

**The Court:** Overruled.

**The Witness:** Yes, I believe so.

**Mr. Witt:** No further questions.

**Mr. Kardy:** No further questions.

**The Court:** Before you leave, would you come up to the bench a moment?

(Off the record bench conference.)

(Proceedings resumed in open court.)

**Mr. Kardy:** I will ask one question, Your Honor, I forgot to ask.

**Recross examination.**

**By Mr. Kardy:**

**Q. Mrs. Roberts,** in your presence and the presence of your daughter, did any Montgomery County Police Officer tell her how to testify in her trial, either Montgomery County or Anne Arundel County?



A. Not in my presence.

Q. Did any State's Attorney; did I, as State's Attorney, or Mr. Cromwell, or anybody in the State's Attorney's office in your presence and the presence of your daughter tell your daughter how to testify in either trial in Anne Arundel or Montgomery County?

A. Not that I know of.

[fol. 113] Q. Did any Montgomery County Police Officer involved in this case, or any other officer, tell your daughter in your presence, or tell you, to tell your daughter to lie in either trial?

A. Of course not.

Q. Did I, as State's attorney, or Mr. Cromwell, as Deputy State's Attorney, or any member of the State's Attorney's office of Montgomery County tell you or your daughter in your presence how she should testify and whether she should lie or color the facts?

A. No, they did not.

Mr. Kardy: No further questions.

Mr. Witt: We have no further questions.

Mr. Kardy: No further questions.

The Court: I would like to ask one question. It's not within the scope of your direct and your cross-examination, but I think you had better come up and see what you think about it.

(Off the record bench conference.)

(Proceedings resumed in open court.)

The Court: All right, you want to excuse her?

Mr. Kardy: No further questions.

The Court: You may be excused.

Mr. Forer: Your Honor, before you go, Mrs. Roberts, as far as we are concerned we are now willing also to excuse Miss Joyce Roberts, if the State is willing to excuse her. I thought Mrs. Roberts would like to know that now.

Mr. Kardy: Fine.

The Court: You want to excuse, or you want to call Miss Roberts?

The Court: Objection sustained.

Mr. Kandy: You might keep your daughter here for a while.

[fol. 114] Dr. Frederic Solomon, was called to the stand as a witness and, having first been duly sworn, was examined and testified as follows:

**Direct examination.**

**By Mr. Witt:**

**Q. Will you state your name, please?**

**A. Dr. Frederic Solomon.**

**Q. What is your address, Dr. Solomon?**

**A. Howard University College of Medicine, 520 W Street, N.W., Washington, D.C.**

**Q. What is your occupation?**

**A. I am a faculty member in the Department of Psychiatry of the Medical School. I am a psychiatrist, child and adolescent psychiatry, specifically.**

**Q. Do you specialize?**

**A. Yes.**

**Q. What field?**

**A. Child and adolescent psychiatry.**

**Q. Now, Doctor, will you tell the Court what experience and training in this field you have, starting with your graduation from College?**

**A. I attended the University of Chicago Medical School from 1954 to 1958. I had some training in the field of child psychiatry before graduation from Medical School. There was also training included in my internship in the University of Illinois, research and educational, hospitals.**

**On completion of internship, I came to the National Institutes of Mental Health, National Institution of Health, in Bethesda, Maryland, where I was assigned to work with adolescents and teenagers and college students, both disturbed and normal, from a research point of view and from a clinical point of view. I spent two years at N.I.H. and**



then spent the next two years at Johns Hopkins Hospital, having one year there of training in general psychiatry, which included adult and adolescent work, and work in the Emergency Room, and having one year of full specialization in child and adolescent psychiatry.

[fol. 115] During the past year I have been an Affiliate Fellow of the Department of Psychiatry of Children's Hospital of the District of Columbia in child psychiatry.

I have received further training in the child analysis program of the Washington Psychoanalytic Institute for one year. I have served as a medical officer in the District of Columbia as a consultant to their Mental Retardation Clinic and to their Crippled Children and Handicapped Children Unit at D. C. General Hospital.

Mr. Forer: If the Court please, I now offer in evidence an Exhibit which was identified in the deposition of Mrs. Whiteleather, which deposition is on file in the jacket that Your Honor has of this case, and it was identified there as Plaintiff's Exhibits Nos. 4 and 4-A, because there are two pages for identification. It was identified by Mrs. Whiteleather as an official Admitting Record of the Prince Georges General Hospital, relating to Joyce Roberts. I offer it in evidence.

The Court: You stipulate that the Custodian brought it here; it's the authentic record?

Mr. Kardy: Yes.

The Court: Objection overruled. It will be admitted in evidence.

(Petitioner's Exhibit No. 5 was so received in evidence.)

Mrs. Roberts:

The Court: I think he is qualified. The doctor will be qualified as a doctor of medicine with a specialty of psychiatry to give opinion. Keep in mind he can give opinion in relation to mental disability; it only goes to wait, whether he is a specialist of psychiatry or not, as I understand the law.

[fol 116] Q. Doctor, I would like you to assume that a sixteen year old girl attempted suicide by taking an intentional overdose of pills, that she was taken to and held in the psychiatric ward of a hospital, that she stated that she didn't want to live, and the general practitioner who saw her at that time concluded that she needed psychiatric help. I want you to assume further that some three and a half months later such a girl were to testify about an event in which she and a boyfriend were parked in a car at night on a lonely country road, three strangers came to the car and got into a fight with her boyfriend, she ran into the woods and had intercourse with some of the strangers. I want you to assume further that there is a dispute in the testimony as to whether she suggested such intercourse or it was forced upon her. I want you to assume further that the event about which she was testifying took place approximately one month prior, prior to her suicide attempt. Would you be able, on the basis of those assumptions, to form an opinion about her probable mental condition and its effect upon how much credence should be placed on her testimony regarding such an event, on the basis of those facts?

The Witness: Yes.

Q. Doctor, will you briefly state your opinion with respect to her mental condition at the time of the suicide attempt?



The Witness: I would say she was mentally ill, and more likely than not, suffering from a serious mental illness.

Q. Will you state the basis of that opinion?

A. Are we talking about at the time of the suicide attempt?

Q. Right.

A. Basis for that opinion is taken from my own experience, from teachings of leading authorities in the field, and by the one research report that bears directly on this question. Suicide in a teenager in the United States is [fol. 117] considered as such—an attempted suicide is considered as such evidence of psychopathology; that is, some mental illness. The nature of this given case, whether the mental illness would be of a more serious or less serious sort, cannot be fully ascertained, of course, from the available facts, however, the probabilities are as follows:

There is one research report that pertains directly to the question of the underlying disorder in suicide attempts; it is now recognized that suicide attempts are a symptom of underlying mental disorders in youngsters, which must precede and follow the attempt. It was found in a series of patients of teenagers coming to the attention of psychiatrists for suicide attempts that Cornell University Medical Center in New York in 1939, that 62% of such patients were schizophrenic.

There are, of course, other conditions which can lead up to a suicide attempt, some of them can be temporary, such as the derangement that may follow the sudden loss of a parent, and the person may express wishes to die, may attempt suicide, and may recover fairly promptly once the immediate grief period is over. These, I believe, are the more rare cases.

In addition to the suicide attempt being part of a schizophrenic process which is, of course, a most serious mental illness, there are other possibilities which are also, to my

way of thinking, quite serious. There is the several personality disorders; there are the pure depressions, primarily these two categories, in addition to the schizophrenic category.

The Court: I think you had better ask him another question.

Mr. Witt: Doctor, would you have an opinion as to the likelihood of the persistence of such a condition for a period of three and a-half months following such a suicide attempt?

Mr. Kardy: Object.

The Court: Sustained.

[fol. 118] By Mr. Witt:

Q. Doctor, assume that such a suicide attempt occurred on the night of August 26, 1961, and that the sixteen year old girl who made such an attempt were to testify in a criminal proceeding on December 5, 1961, do you have an opinion as to her mental condition at the time of her testimony?

Mr. Kardy: Object.

Mr. Witt: On December 5, 1961—

Mr. Kardy: Excuse me. Object.

The Court: Objection overruled. I will permit him to answer yes or no.

The Witness: Yes.

By Mr. Witt:

Q. What is that opinion?

Mr. Kardy: Object.

The Court: I will overrule it.

The Witness: I would say there is a substantial risk that she would still be mentally ill three and a-half months later on the basis only of the information you have given me.



Mr. Kardy: Object as not being the test and move the answer be stricken from the record—using the word “substantial”—speculation.

The Court: I don't think he answered your question; I will move it out of the record. Grant the motion.

Mr. Witt: On the ground that he didn't answer the question? The question, as I recall, was—

The Court: Doctor, you answered the preceding question merely that this sixteen year old person, first referred to by the original question, had a mental illness when she tried to commit suicide. Now the question is, if you can answer it, would you give your opinion as to whether or [fol. 119] not she had a mental illness three months later, or so, when she testified at a trial?

The Witness: Well, Your Honor—

The Court: You can answer that yes or no.

(Pause.)

The Witness: I would have to answer no.

The Court: All right.

Mr. Witt: I think he ought to be permitted to explain his answer, Your Honor.

The Witness: May I?

The Court: Yes, go ahead.

The Witness: I—

The Court: Yes, you may explain.

The Witness: Thank you.

The Court: You answered you didn't know. I think it's perfectly obvious why you wouldn't know. I realize what the doctor is up against. Go ahead.

The Witness: Thank you. In the current circumstances what I must do is look at the group of patients who in their teen age years make a suicide attempt.

The Court: Well, unfortunately then he can't answer the question: this particular individual marked in this hypothetical question is not one of a group, a breathing, living human being. Ask another question.

By Mr. Witt:

Q. Do you have an opinion, Doctor, as to the likelihood of the persistence of that mental illness at the time of the testimony?

Mr. Kardy: Object.

[fol. 120] Mr. Witt: Your Honor, we are not forced to deal here with—

The Court: Objection sustained.

By Mr. Witt:

Q. Doctor, do you have an opinion about how the mental illness, which you have described, would affect the credibility of a witness about the kind of circumstances which I described, that is, an intensively personal situation in which personal motivations were involved?

Mr. Kardy: Object.

The Court: You can answer it merely yes or no.

The Witness: Yes.

Mr. Witt: What is that opinion?

Mr. Kardy: Object.

The Court: Sustained.

Mr. Witt: Your Honor, I offer to prove that his opinion would be that the mental illness which he has described would substantially affect the credibility of such a person about such an incident.

The Court: Well I never heard of such a rule. I sustained the objection. It's up to a jury to determine the credibility. How can we take and let a man, after a trial has occurred, come in and say the credibility was no good?

Mr. Witt: That is exactly the point, Your Honor.

The Court: Just right, and I don't follow you. Objection sustained.

Mr. Witt: Very well, Your Honor. No further questions.

Q. • • • you have • • • information • • • had you previously had information that on the night of the alleged rape,





[fol. 122] LEONARD T. KARDY, was called to the stand as a witness and, having first been duly sworn, was examined and testified as follows:

**Direct examination.**

Mr. Cromwell: I assume there is no objection, Your Honor, because Mr. Kardy has been present in Court during the proceedings, I am sure there is no objection on their part. He can testify but I want the record to be clear on that question.

Mr. Forer: I think the record is clear that Mr. Kardy has been here.

Mr. Kardy: I think so.

The Court: Let's take a ten minute recess now, and let's get our blood pressure down.

(Recess.)

(Witness resumes the stand.)

By Mr. Forer:

Q. You are Leonard T. Kardy, State's Attorney for Montgomery County, Maryland, are you not?

A. That is correct, Mr. Forer.

Q. Mr. Kardy, how long have you held that office?

A. I have been State's Attorney for Montgomery County approximately six years, and prior thereto I served four years as Deputy State's Attorney.

Q. And Mr. Kardy, you, as State's Attorney, and assisted by Mr. Cromwell, your Deputy, prosecuted for the State in the trial of John Giles and James Giles on the charge of raping Joyce Roberts, did you not?

A. That is correct, Mr. Forer.

Q. Mr. Kardy, at the time of the trial which you will recall, I believe, December 4 and 5, 1961?

A. That is correct.

Q. Did you have any information or had you previously had information, that on the night of the alleged rape,



[fol. 123] at the time of the alleged rape, namely July 20, 1961, there was pending in the Juvenile Court of Prince Georges County, Maryland, a charge that Joyce Roberts was out of parental control?

A. To the best of my knowledge, I did not know that at the time of the trial of December 4 and 5, 1961.

Q. Did you at the time of the trial know, or have information, that in a proceedings in the Juvenile Court of Prince Georges County there was pending on July 20, 1961, a recommendation that Joyce Roberts be put on probation?

A. To the best of my knowledge I did not know those facts, sir.

Q. Mr. Kardy, the Petitioners' Exhibit No. 1, which is the transcript of the trial, shows at page 153, that in your cross-examination of John Giles—

The Court: Mr. Forer, let me pick you up here. Is this the transcript?

The Clerk: Yes.

Mr. Cromwell: Page 153?

Mr. Forer: Yes.

(Paper shown to Mr. Kardy by Mr. Forer.)

By Mr. Forer:

Q. The record shows, Mr. Kardy, that you asked John Giles on cross-examination the following question after he had testified something about probation, Question: "So you were on probation, and she was on probation, and so you just sat down and talked?" Answer: "Yes." Question: "What did you talk about, when you two probationers sat down?" You see those two questions?

A. Yes, sir, that is correct.

Q. You did ask these two questions?

A. I did ask those questions.

Q. Would you have asked those two questions if you had known that on July 20, 1961, there was pending in the

Juvenile Court of Prince Georges County, Maryland a [fol 124] charge that Joyce Roberts was out of parental control and that probation had been recommended for her.

A. Mr. Forer, I believe the basis of those questions was the defense's allegations and the police report. We also had that. Both John and James Giles stated that Joyce Roberts said to them that she was on probation.

Q. Well, I am unclear; your answer to my question is "yes," or is it, "no"?

A. I believe I have answered the question.

Q. I asked you if you would have asked those same questions if you had the information which I think is now being brought out concerning this Juvenile Court charge in Prince Georges County, the fact that probation, a recommendation for probation, was pending?

A. I don't know; that would be speculation, Mr. Forer.

Q. Your answer—

A. I don't know.

Q. Your answer—

A. I don't know.

Q. All right. In the same transcript, page 86 of the trial record, and this is in your redirect examination of Joyce Roberts—

Mr. Cromwell: Page 86?

Mr. Forer: Eighty-six.

(Paper shown to witness by Mr. Forer.)

By Mr. Forer:

Q. It is correct, is it not, that on redirect examination of Joyce Roberts at this trial, or at the trial, you asked the following question, and she gave the following answer, Question: "Were you on probation at the time these two boys raped you?" Answer: "No, sir." Did you ask that question on redirect and did Joyce Roberts give you that answer?



A. Yes.

Q. My question now is this: If at the time you asked that question and at the time Joyce Roberts gave the answer, "No, sir," if you had known that on July 20, 1961, there was pending in Juvenile Court charges in Prince [fol. 125] Georges County and that probation—a recommendation of probation was pending against Joyce Roberts, would you have brought that out in your further questioning as you did not at the trial?

A. I don't know; that would be speculation. I testified to the best of my knowledge I did not know that there was a recommendation of probation by a Prince Georges Probation Officer.

Q. And your answer now is that you do not know whether or not, if you had such knowledge, it would have made any difference to you?

A. I don't know, and the reason the question was asked was because it was raised on defense; that is why I asked the question on redirect. Mr. Prescott, who represented James and John, brought that out in his cross-examination of Joyce Roberts and that is why I asked the question on redirect, because of his cross-examination of Joyce Roberts.

Q. Because on cross-examination of Joyce Roberts he had asked her whether it was not a fact that she had told the Giles brothers in the woods that she was on probation?

A. That is correct.

Q. Yes, sir. Now, Mr. Kardy, I believe you brought out something on questioning of Mr. Prescott concerning the police report?

The Court: Concerning what, Mr. Forer?

Mr. Forer: Police report that you had showed Mr. Prescott, the police report.

The Witness: Yes, I showed him my entire file.

By Mr. Forer:

Q. Did the police report that you saw—you saw the police report prior to trial, of course?

Q. Did the police report that you saw state in there that the defendants had made a statement to the police that Joyce Roberts had that night in the woods said to them that she was on probation?

A. I believe the statement of the defendants to our detectives in the case, I believe they stated that, and I am sure that is in there, Mr. Forer, and if it is in there Mr. [fol. 126] Prescott saw it, because I let him have the whole report.

Q. Yes, now you knew Joyce Roberts was residing in, a resident of Prince Georges County?

A. Yes, I knew she was a resident of Prince Georges County.

Q. Did you make any attempt to find out whether or not, in fact, Joyce Roberts was on probation in Prince Georges County on July 20, 1961?

A. I did not.

Q. Did you direct any of the policemen or any of your deputies or assistants to ascertain whether or not she was on probation?

A. To the best of my knowledge—

Q. To July 20, 1961?

A. To the best of my knowledge, information and belief I did not.

Q. Now Mr. Kardy, there has been testimony here which, of course, you have heard that a proceeding was instituted in Montgomery County Juvenile Court which resulted in Joyce Roberts being sent to Montrose, and I believe you also heard testimony by Lieutenant Whalen that he was instrumental in the instituting of this proceeding?

A. That is correct.

Q. Were you consulted about this proceeding in the Montgomery County Juvenile Court before it was instituted?

A. Yes, I was.

Q. Who consulted you?

A. Lieutenant Whalen consulted me, Mr. Forer.



Q. Yes; now, did Lieutenant Whalen, when consulting you about this matter, give you any information that Joyce Roberts had some mental problems?

A. None whatsoever, Mr. Forer. The conversation as I best recall now, almost three years ago, Lieutenant Whalen called me and informed me that Mrs. Roberts had told him that Joyce Roberts, the State's witness and Prosecutrix in the then alleged rape case against James and John Giles and Joseph Johnson, that she was being harassed constantly in Prince Georges County by people coming by in cars honking, throwing bottles, knocking on the door. [fol. 127] and Mrs. Roberts, as I understood it, contacted Lieutenant Whalen and asked for protective custody. When Lieutenant Whalen brought that to my attention, I suggested that he see Judge Noyes about it, and that she be placed in protective custody. There was no discussion whatsoever as to her mental condition, or anything of that nature, only the fact of protecting a State's witness who was being harassed as a result of the alleged rape of July 20, 1961.

Q. Didn't you become aware soon after that conversation that the proceeding which was actually instituted in the Montgomery County Juvenile Court alleged that Joyce Roberts was a juvenile delinquent and out of parental control as well as alleging that she was a necessary witness for the State?

A. I don't believe that to be correct, Mr. Forer. I did not see the Juvenile Court records until you produced them here. As I told you in my prior question, Lieutenant Whalen posed the problem to me of protecting a State's witness and I told him to see Judge Noyes to see that she was placed in protective custody until such time as we would need her for trial.

Q. You didn't know what happened thereafter in connection with this proceeding?

A. I know thereafter she was placed, I believe, in Montrose School, just for the purpose of being protected

as a State's witness, that she would be available for trial any time thereafter.

Q. Well, Mr. Kardy, I think you may have misspoke yourself. It's a fact that you know now that she was sent to Montrose School for reasons in addition to her being wanted to be held in protective custody as a State's witness?

A. I saw the proffered Exhibit that you have proffered for identification purposes only, and my interpretation of those Exhibits which are not in evidence, differ from yours, Mr. Forer.

Q. Yes. I am just trying to find out the extent of our differences, if you would favor me with a reply.

A. They are not in evidence. I state again that we differ in our opinion as to why she was placed in Montrose.

In my opinion she was placed there in protective custody.

[fol. 128] Q. And for no other reason?

A. And for no other reason. That was the purpose of our instituting the proceeding in Prince Georges County.

Q. Is that also your interpretation—

A. In Montgomery County, I am sorry.

Q. Is that also your interpretation of the findings, an order commitment made by Judge Noyes?

Mr. Cromwell: Your Honor, I object to it. I think he has answered the question and those documents are not in evidence.

The Court: Well, I feel it's argumentative. I would sustain the objection.

Mr. Forer: Beg pardon?

The Court: I think it's too argumentative, Mr. Forer; I will sustain it.

By Mr. Forer:

Q. Mr. Kardy, did you have information on or before the date of the trial of the Giles brothers that Joyce Roberts had attempted suicide late in August of 1961?

A. To the best of my information, knowledge, and belief, Mr. Forer, prior to December 4 and 5, 1961, the actual



trial dates, I had information that Joyce Roberts was hospitalized because of taking excessive drugs. I did not have any knowledge of any suicide at all.

Q. Well, who gave you this information about the excessive drugs?

A. I believe it was Lieutenant Whalen.

Q. Didn't he tell you that the taking of these excessive drugs was intentional and not accidental?

A. No, he did not.

Q. He just told you that Joyce Roberts was in the hospital for taking an overdose of drugs?

A. That is the information he related to me.

Q. Didn't he tell you what hospital she was at?

A. I don't know.

[fol. 129] Q. Did he tell you that she was in a psychiatric ward?

A. He did not.

Q. Did you ask him whether this overdose was intentional, or unintentional?

A. I did not.

Q. When did you get this information; was it soon after the suicide attempt—excuse me, was it soon after the overdose of drugs?

A. I assume it was.

Q. And you made no inquiry or attempt to find out what caused this overdose of drugs?

A. No, I did not. I guess I just assumed that she did this because of the case that was pending in Montgomery County. I didn't make any investigation.

Q. Well, didn't you also know at the time that Joyce Roberts had alleged that she had been raped by two other men on or about August 25, 1961, just before this suicide attempt?

A. I knew that some time prior to trial there was a case in Prince Georges County which had no merit, in that she didn't make a rape charge; it was investigated, and there was no rape.

Q. The last of the information you received was that the actual trial was held prior to December 4 and 5, 1961, the actual

Q. You did know prior to trial that there had been an investigation in Prince Georges County of an alleged rape of Joyce Roberts and that that charge had no merit or that was the conclusion, is that accurate?

A. As I stated in my prior question, as I best recall sometime prior to trial—

Q. Yes.

A. —that being December 4, it came to my attention, and I assume it came to my attention from Lieutenant Whalen or some Montgomery County Police Officer, because I had no conversation with any Prince Georges County Police Officer that there was this investigation in Prince Georges County.

Q. Would you say to the best of your recollection that this information came to you from Lieutenant Whalen?

A. I would say so; that would be a fair statement.

Q. Did you ask Lieutenant Whalen or anyone else on the police force or any of your assistants to look into the details of this?

A. I believe, Mr. Forer, it was brought to my attention [fol. 130] that there was no charge pending; there was nothing; there was an investigation, and there were no charges placed.

Q. Now, at the time of the trial, or before the time of the trial—did anyone bring to you any information to the effect that Joyce Roberts was mentally or emotionally disturbed?

A. None whatsoever.

Q. Now, at the time of the trial had anyone told you or brought to you information to the effect that Joyce Roberts was sexually promiscuous?

Mr. Cromwell: I object.

The Court: Sustained.

By Mr. Forer:

Q. At or before the time of the trial did you have any information with regard to the fact that Joyce Roberts' reputation for chastity or unchastity?

Mr. Cromwell: I will object.



**The Court:** Objection overruled.

**The Witness:** I formed no opinion as to her chastity.

**Mr. Forer:** That wasn't my question, Mr. Kardy. My question was: Had you received any information relative to her reputation for chastity or unchastity.

**Mr. Cromwell:** Object.

**The Witness:** I received no—

**Mr. Cromwell:** Excuse me; I had objected, Your Honor.

**The Court:** Objection overruled.

**The Witness:** I received no information as to her reputation as to chastity.

**By Mr. Forer:**

**Q.** Had you received any information as to whether or not she was chaste?

**[Vol. 131] Mr. Cromwell:** Object to that question.

**The Court:** Objection sustained.

**By Mr. Forer:**

**Q.** Had you received any information as to Joyce Roberts' credibility and reliability?

**Mr. Cromwell:** As to what? I didn't hear.

**Mr. Forer:** As to her credibility.

**Mr. Cromwell:** Object to the question. The Court please, this is all going to the—on the theory of newly discovered evidence.

**Mr. Forer:** No it is not. It's a question of what information was in the possession of the Prosecutor.

**The Court:** Read that question.

**The Reporter:** Yes, sir.

**(Reporter reads from the record.)**

**Mr. Cromwell:** I may have misunderstood. Is he asking whether he received information or had an opinion? Is the question: he received information about her reliability, is that the question?

**Mr. Forer:** That is right. That is all I asked.

**Mr. Cromwell:** I will object.

The Court: As I understand, that is what he asked. Object to it; I don't know what difference that would make, unless—

Mr. Cromwell: I will withdraw my objection to the question.

The Court: All right, you may answer.

The Witness: I received no information as to her credibility.

By Mr. Forer: Q. Mr. Kardy, I believe you were in the

Q. Did you at any time, Mr. Kardy, direct any investigation of the—directed toward ascertaining the character information or credibility of Joyce Roberts?

A. I did not.

[fol. 132] Q. Did you have any information that any such investigation had been made by the police?

A. To my knowledge, it had not.

Q. Did you at any time direct any such investigation with regard to Stewart Foster?

A. I did not.

Q. Was such an investigation to your knowledge made by the police?

A. To my knowledge it was not, Mr. Forer.

Q. Did you make any attempt to ascertain whether Stewart Foster had a criminal record?

A. I believe I did after the Giles case; I don't think in the Giles case I did.

Q. Well, I am really thinking about at or prior to the trial of the Giles case?

A. No, I didn't.

Q. Now, of course, you were not present when Joyce Roberts testified at the preliminary hearing?

A. I was not.

Q. However, it's a fact, is it not, that Joyce Roberts prior to the trial told you that at the preliminary hearing she had testified that she had been raped by only two men?

A. No, that is not a fact.

Q. It's not a fact?

A. It is not a fact.



Q. Well, had someone told you that prior to the trial?

A. No. My understanding of the preliminary hearing—as I say, I wasn't there—one of my assistants was, and I believe it was Mr. Cromwell, that she testified that only two raped her and then corrected that testimony and said three, and then when I interrogated her or questioned her in my office prior to trial, she told me at that time that both James Giles, John Giles, and Joseph Johnson did penetrate her and did rape her.

Q. Mr. Kardy, I believe you were present at the clemency hearing before the Governor?

A. I was, sir.

Q. And it's a fact, is it not, that at that hearing the Governor asked you for a statement of your position?

A. He did, sir.

[fol. 133] Q. And am I correct that at that time you told the Governor that you, the State's Attorney, did not oppose any action of clemency which the Governor might choose to take?

A. That is correct.

Q. If I misstated, I would like you to correct it.

A. Yes, I told him, as I stated in my opening statement here, I never asked for the death penalty. I didn't in this case, and when I appeared before Governor Tawes I said it was in his hands. I had no statement to make at that time.

Q. In fact, you made it perfectly clear you didn't oppose any clemency?

A. I left it in the Governor's hands.

Q. Now, do you recall that in your summation to the jury in the Giles trial, which I can't show you because it's not reported, do you recall telling the jury that this case was one of the most vicious cases you had ever prosecuted?

Mr. Cromwell: Object.

Mr. Perer: Preliminary question—

Mr. Cromwell: Still object to it.

The Court: I don't see any harm in that question, overrule it.

The Witness: It has been a long time ago, Mr. Forer, to the best of my knowledge I think I represented to the jury that it was a very serious rape case; I don't know whether I used the term "vicious." In my opinion, then, as now, I think it's a serious case.

By Mr. Forer: Personally as Prosecuting Attorney and have the Governor know my feeling that it was in his mind to make the decision.

Q. Mr. Kardy, we are both lawyers?  
A. Yes.

Q. We both share the common feeling that we do not like a witness to run away from him. We would like right—

Mr. Cromwell: Is this a pending question or oratory?  
The Court: Let's ask the question.

[fol. 134] By Mr. Forer: A. Not only in capital cases but in cases where the witness is a person of high reputation and the case is of great importance.

Q. Isn't it a fact, Mr. Kardy, that you did refer in your summation to the case as a vicious case?  
A. I don't know; I may have.

Q. You may have?  
A. I may have.

Q. If you knew then what you know now, would you have told the jury it was a vicious case?

Mr. Cromwell: I have to object for the record, Your Honor, that is—  
The Court: I think that is argumentative.

Mr. Cromwell: —a fact for the jury to decide.  
The Court: I will sustain that objection to that type of question.

Mr. Forer: You may cross-examine.

Cross examination.  
By Mr. Cromwell: A. I believe that is correct.

Q. Mr. Kardy, in connection with the clemency hearing about which you were asked some questions, when you visited, or when the Governor called upon you to make any statement and you indicated, the response which you gave, with intention to rape or were ill-bid on rape?



did you make a statement that you did not oppose clemency because you felt the case, from the investigation which had been conducted, was no longer a capital case, a serious crime?

A. No, it wasn't that. I just wanted to appear there personally as Prosecuting Attorney and have the Governor know my feeling that it was in his hands and for him to make the decision.

Q. Point of fact, Mr. Kardy, since you have been the State's Attorney have you ever made to the Court in a capital case any recommendation in connection with the imposition or non-imposition of the death penalty or life imprisonment?

A. Not only in capital cases, I never made it in any other cases. It's up to Their Honors to determine what punishment should be dealt out in any case.

[fol. 135] Q. Is that what you advised the Governor when you were there?

A. That is what I advised the Governor.

Q. Is it your understanding, as State's Attorney, that in some counties in Maryland, recommendations are made by the State's Attorney to the Court in criminal cases?

A. I think in most counties the State's Attorney makes those recommendations.

Q. It's not the case in this county?

A. It has never been the case in this county while I have been State's Attorney and never will.

Q. Now, Mr. Kardy, in connection with the question asked concerning the preliminary hearing, would it refresh your recollection if I told you that I was present—

A. I believe you were.

Q. —at the preliminary hearing? And following the preliminary hearing all three of the—the preliminary hearing was held before Judge Gordon in Silver Spring, is that—

A. I believe that is correct.

Q. And did Judge Gordon—all three of the defendants, both the Giles brothers and Johnson, on the charge of rape?

A. He did.

Q. Did he hold any one of them on a charge of assault with intention to rape, or were all held on rape?

A. They were all held on a rape charge.

Q. Was it your understanding from what transpired at the preliminary hearing that Joyce Roberts, the victim, thought that in order to constitute the offense of rape there had to be an emission by a person?

Mr. Forer: I object, Your Honor. Was it his understanding from what happened at the preliminary hearing that he did not attend.

The Court: I think you opened it up on that direct. I will overrule it. I will permit that.

The Witness: That is correct.

[fol. 136] By Mr. Cromwell:

Q. And that is what was the confusion that was inquired about by Mr. Forer?

A. That is correct.

Mr. Forer: Object. The question is wrong form. I didn't inquire about any confusion, and if so, whose confusion.

Mr. Cromwell: Mr. Forer's.

The Court: Wait a minute.

Mr. Forer: How can he answer about my confusion? Then the question is doubly objectionable.

The Court: Read the last question.

The Reporter: Yes, sir.

(Reporter reads from the record.)

Mr. Forer: I move the answer be stricken. The answer was obtained while I was giving my objection. It came too fast.

The Court: I don't think the question said you were confused. I never like to hear other counsel say the lawyer or someone else is confused. I don't mind if they say they may be wrong, but I hate for them to, lawyers to start practicing psychiatry in Court and say—I don't think that is objectionable, Mr. Forer. I will leave it in the record. It's overruled; objection not sustained.



By Mr. Cromwell:

Q. Mr. Kardy, following this case, by that I mean following the presentment of this case to the Grand Jury and prior to the trial of this case in December of 1961, and also prior to the trial of Joseph Johnson in Anne Arundel County in September of 1962, did you have occasion to interrogate or speak with or interview Joyce Roberts and Stewart Foster?

A. I did, prior to both trials.

Q. Prior to both trials?

A. Yes, sir.

[fol. 137] Q. Was the statement which they gave you prior to both of those trials the same statement about which they testified in Court?

A. That is correct.

Q. At any time did you tell either Joyce Roberts or Stewart Foster or any other witnesses in this case, who testified in Montgomery County or Anne Arundel County, what to say or how to say their testimony?

A. I did not.

Q. Did you tell them not to say anything, these are the witnesses, not to say anything that had happened in the case?

A. I did not.

Q. In speaking with Detective Collins of the Montgomery County Police Force did you discuss with him a fact which you knew which you instructed him not to disclose unless specifically asked?

A. I did. I told him not to disclose under any circumstances the fact that both John and James had active cases of gonorrhea. I thought it would be prejudicial to their case, and I told him not to bring that out under any circumstances.

Q. Now, when was it, do you recall, that Mr. Stedman Prescott of the Bar of Montgomery County was appointed to represent the defendant petitioners in this case?

A. It was some time early in the fall, September, October, of 1961, as I recall.

with intention to rape, or were all held on rape

Q. And do you remember whether or not you asked him, or he asked you, to speak with you concerning this case?

A. He called me, either called me or stopped by my office here in the Courthouse to discuss the case.

Q. And was the discussion which was had conducted in your offices or in his offices?

A. They were conducted at my offices here in the Courthouse.

Q. That was at his request?

A. At his request.

Q. Did you discuss the case at that time, giving him any information?

A. I discussed the case fully with him. I told him who we expected to call as State's witnesses; I let him read all of the police reports, which I didn't have to do at that time, the new criminal rules as I believe weren't in effect at that time, but because of the seriousness of the case he was [fol. 138] appointed counsel, and I let him have my whole file, go over it, and look at everything in the file that I would not ordinarily do in the ordinary case. But, because of the nature of this case and the seriousness of it, as I say, I let him have everything that we had in our file.

Q. Mr. Kardy, thereafter, did Mr. Prescott ever come back to your office and make any additional inquiries of you for further information or further assistance?

A. Mr. Prescott, to the best of my knowledge, never asked me for another thing because he had everything that I had at that time.

Q. Did he ever come to you and have any conversation with you about trying to get Juvenile Court records in Montgomery County or Prince Georges County?

A. He never did.

Q. If he had come to you, would you have been any assistance to him that you could have been?

A. I would—

Mr. Forer: Object.

The Court: Why do you object to that?

Mr. Forer: So hypothetical.



The Court: Objection overruled.

The Witness: If Mr. Prescott had come to me, I would have assisted him within the law as I know it in Maryland.

By Mr. Cromwell:

Q. At any time, Mr. Kardy, in the presentation of this case to the Court and Jurors in Montgomery and Anne Arundel County, did you conceal from either the Court or the Jury any fact which you believe to be, or which you understood to be, admissible exculpatory evidence on the part of the defendants?

A. I did not.

Q. Did you suppress any evidence in this case?

A. I did not.

Mr. Cromwell: That is all.

[fol. 139] Redirect examination.

By Mr. Forer:

Q. Mr. Kardy, you testified that if Mr. Prescott had come to you to ask for your help in getting Juvenile Court records, you would have assisted him within the law as you know it; now, the law as you know it is that he can't get the Juvenile Court record; is that correct?

A. Well, I wouldn't—

Q. The law as you think you know it?

A. No, as I understand the law, Mr. Forer, and you got the Juvenile Court records here, I am sure Mr. Prescott is able counsel, under the law I think there is a proceeding that you followed ably because you are able counsel, to petition the Court to release the records, and I assume Mr. Prescott might have done that. But, as you also know, as a matter of law, and it was ruled in the Giles cases, John and James case, that Juvenile records are not admissible.

Q. Mr. Kardy, you testified that you never made a recommendation to the judge for a sentence of death?

A: That is correct.

Q. The fact is though, that in your summation to the Giles Jury, you told them that you never asked that but you also suggested to them that they shouldn't tie the hands of the Judge; that the Judges know how to sentence, and therefore, they shouldn't make recommendations of mercy, didn't you?

Mr. Cromwell: Object to the question.

Mr. Forer: He went into this business; I didn't. He opened the door on cross-examination.

The Court: It seems to me I am going to permit it. Overrule the objection, but Mr. Forer, it seems to me that you are getting into questions that I can't see what in the world they have to do with the decisions I have to make in this case; I will permit it, but let's try not to get argumentative in it.

[fol. 140] The Witness: I did make that argument, because under the first count of rape, and without any recommendation of capital punishment, the Judge could suspend the sentence; the sentence under the first count in the indictment under which James and John Giles were tried, reads that the Judge can give them eighteen months, up to life, up to death, within the wisdom of the Court, and I have always argued to juries that my job is to prosecute without fear or favor to present the case as fairly as I can. Their job is to either find them guilty or not guilty, and the Judge's job is to impose the sentence. They could have imposed without capital punishment, and then, as well you know, under the Maryland law the maximum sentence then would have been twenty years, but I will also—

The Court: I think you had better ask him another question.

Mr. Forer: I have been waiting for him to complete his answer.

The Court: You are giving Mr. Kardy—he is not campaigning now, but you are really giving him a chance.

The Witness: I am not campaigning, Your Honor.



The Court: I think it's very good, Mr. Kardy, go right ahead.

The Witness: Thank you.

Mr. Forer: You will have to convince me to vote for him yet. Mr. Kardy, I believe you testified on cross-examination, by your side of the table, that you told Officer Collins not to disclose the fact that the defendants had gonorrhea?

A. That is correct.

Q. Was it your understanding that Officer Collins is a doctor of medicine?

A. No, he is not a doctor of medicine.

Q. Was it your understanding that Officer Collins is competent to diagnose gonorrhea?

A. Dr. Frank, the jail doctor, is the one that made the report to us that he examined both these boys and that we should immediately contact the Roberts girl and the [fol. 141] parents, so that they could take adequate precautions to have penicillin shots because both these boys had active cases of gonorrhea. That came from Dr. Frank.

Mr. Forer: I move that the witness' answer be stricken, that he be admonished to restrict his answers to the questions. I asked him whether it was his understanding that Officer Collins was competent to, or capable to diagnose gonorrhea, and then he gave me a long story about some Dr. Frank, which I didn't ask. I think it should be stricken; if I had wanted that answer, I would have asked for it.

Mr. Cromwell: I think he asked for it.

Mr. Forer: No, I didn't ask for it.

The Court: I will move it out of the record and restrict answers to the ones that are responsive to the question.

Mr. Forer: All right.

By Mr. Forer:

Q. So if I am correct, you instructed Officer Collins not to disclose something that he couldn't possibly have testified to on the stand, is that what you are telling us?

A. I am not telling you that.

Q. I see. But you told Officer Collins, who is not a doctor, not to testify on the stand—

Mr. Cromwell: I—

Mr. Forer: —not to testify on the stand that the defendants had gonorrhea?

Mr. Cromwell: Object, as argumentative.

The Court: Objection overruled.

The Witness: I told him not to testify—

By Mr. Forer:

Q. Will you please answer the question?

A. I would like to explain.

[fol. 142] Q. I would like an answer first.

A. I told him not to disclose that, yes.

Q. Why yes?

A. May I explain it?

The Court: Yes, you may explain.

The Witness: Thank you, Your Honor. Mr. Forer, may I explain it? I told him not to state that because it would be prejudicial to James and John Giles.

By Mr. Forer:

Q. Yes. Now, was it your impression that Officer Collins would have been permitted to testify on a medical question as to whether or not the defendants had gonorrhea?

Mr. Cromwell: Objection. It's irrelevant to this case.

Mr. Forer: I will withdraw the question.

By Mr. Forer:

Q. In your long experience as an attorney have you ever heard a police officer testify on the medical condition of a defendant?

Mr. Cromwell: I have to object to the question.

The Court: Well, Mr. Forer?



Mr. Forer: Well, I withdraw the question.

The Court: You and I and all of us have heard them try.

Mr. Forer: All right.

By Mr. Forer: -

Q. All right, was it reported to you that Joyce Roberts had gonorrhea?

A. It was reported to me that she had not.

Q. Did you disclose to the defense that the men that had allegedly attacked Joyce Roberts had gonorrhea and that Joyce Roberts did not have gonorrhea?

A. Mr. Prescott read the report. The report read, Mr. [Vol. 143] Forer, that Dr. Frank made an investigation of John and James Giles—

Mr. Forer: I object. He is again not answering the question.

The Witness: I am trying to—

Mr. Cromwell: I think he is answering the question he asked, whether he related that and said it was in the report.

Mr. Forer: The question is capable of a yes or no answer, and not a speech.

Mr. Cromwell: I think Mr. Forer is making the speech.

The Court: I don't know. I think he is trying to fairly answer that question; maybe he can't answer it "yes" or "no." What he said, before he was interrupted, as I understand it, he gave him the police reports, or certain reports which stated Dr. Frank reported they had gonorrhea. Seems to me that would be tantamount to "yes."

Mr. Forer: Is that your answer?

The Witness: That is my answer. I would like to further go on; when Mr. Prescott read the report, the report read Dr. Frank did examine both these boys here today and said they had active cases of gonorrhea, and further stated that the girl's parents should be notified immediately so they could take the necessary precautionary methods.

Mr. Forer: Move it be stricken and not responsive to anything and completely irrelevant to the question.

The Court: See no harm in it. Overruled.

By Mr. Forer:

Q. Did this report you showed to Mr. Prescott show the girl did not have gonorrhea?

A. The report didn't state that.

Q. In other words, Mr. Prescott had information that the defendants had gonorrhea?

A. That is correct.

[fol. 144] Q. But he did not have information that the girl did not have gonorrhea, as far as you know?

A. I believe I told him that, that she did not have gonorrhea.

Q. And when Mr. Prescott asked Joyce Roberts on cross-examination whether she had, or ever had, gonorrhea, you objected, didn't you?

A. That is correct.

Q. And the question was excluded?

A. Because, I objected because it was sustained, I guess I was right, I don't know.

Q. Sometimes I get objections sustained; don't you think—

The Court: Sometimes we sustain them and get overruled.

The Witness: That is right.

By Mr. Forer:

Q. Don't you think it was your duty to inform the jury and the court after Mr. Prescott had tried to ascertain the information and had failed, that it was your duty to inform the jury and the Court that this girl, who had allegedly been raped by these two men, didn't have gonorrhea and they did?

Mr. Cromwell: Objection.

The Court: I think that would be a question of fact that you drop in my hands right now, the significance of it. I will sustain the objection.



**Mr. Forer:** No further questions.

**Mr. Cromwell:** I have no further questions.

(Witness leaves the stand.)

**Mr. Forer:** We will ask Mr. Cromwell to take the stand as an adverse witness.

**The Court:** I think, Gentlemen, we had better recess for lunch. It's 1:00 o'clock. We will recess until fifteen minutes past 2:00.

(Recess.)

[fol. 145] **The Court:** Counsel, Petitioners, and the parties to this trial, and the spectators, it has been called to my attention during the recess that persons interested in this case have been selling, word hawking used, certain terminology to this case in the Courtroom, on the Courthouse steps and the corridors of the Courthouse. I am compelled to tell you that that type of thing is improper. Those of you who may be here, who have been doing that, must cease to do it.

If this had been a jury trial or some other, it would have been grounds for a mistrial and possibly contempt for the persons who were doing it within the confines of the Courthouse. Your Courthouse, our Courthouse is not to be used as a stage for performances or a vaudeville show, and it's certainly not to be used for commercial purposes for selling or hawking anything, whether it's our own propaganda, which you have a right to publicize and peddle, as it were, if you like, but please, not in the Courthouse or on the Courthouse property. You may do it on the streets; that is perfectly all right, and those who have been doing it here are admonished to cease and desist from it.

Call your next witness.

**Mr. Forer:** Mr. Cromwell.

**Mr. Cromwell:** Objection. The Court: I think that would be a question of fact that you drop in my hands right now, the significance of it. I will sustain the objection.

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JAMES CROMWELL, was called to the stand as a witness and, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Scupi:

Q. Would you state your name, please sir?

A. James Cromwell.

Q. And your occupation, sir?

A. I am an attorney at law.

Q. Could you tell us whether in 1961, you were a Deputy State's Attorney for Montgomery County?

[fol. 146] A. I don't know whether I was Deputy State's Attorney. I may have been Assistant State's Attorney at that time. I have, I think, been Assistant State's Attorney—I think I may have been Assistant State's Attorney at that time.

Q. Were you associated with Mr. Kardy in the prosecution of the Giles case in December of 1961?

A. That is correct, and in the Johnson case, and also participated, represented the State at the preliminary hearing of all three in Silver Spring prior to their indictment.

Q. Now with reference to the preliminary hearing you have just mentioned, you were present at that preliminary hearing?

A. I was present at that.

Q. Did you hear the testimony of the prosecutrix, Miss Roberts, at that preliminary hearing?

A. Yes, I did. I interrogated her myself.

Q. Now do you know whether or not at that preliminary hearing Miss Roberts stated that only two persons and not three had had sexual relations with her that night?

A. The word "sexual relations," I don't know whether that word was used. I think the word which I asked her initially, in my questioning of her was whether or not, and all three defendants were there, whether or not she had had intercourse with each of the defendants at the prelim-



inary hearing, and I pointed to each of them in turn, as I recall.

With reference to one of them, and I do not at this time, of my own independent knowledge, know which one it was; I feel fairly sure that it was John Giles, but I don't independently recall that; she stated that she did not have intercourse with him, initially.

Q. You mean in your initial examination, is that what you mean by "initially"?

A. When I asked her whether she had intercourse with one of them, she stated that she did not. She later corrected this, but initially she stated she did not.

Q. Now let me ask you, did you know at the time of the trial in December, 1961, that from April to October of 1961, and including July, 1961, there was a pending Juvenile [fol. 147] Court proceeding against Miss Roberts in Prince Georges County?

A. I had no knowledge of that.

Q. You had no information whatsoever with respect to any pending Juvenile Court proceeding in Prince Georges County?

A. Absolutely no information about any proceeding in Prince Georges County in the Juvenile Court.

Mr. Scupl: Those are all the questions we have.

Cross examination.

By Mr. Kardy:

Q. Mr. Cromwell, did Joyce Roberts at the preliminary hearing that you testified to, did she subsequently correct her testimony as to having intercourse with James Giles, John Giles, and Joseph Johnson at that preliminary hearing?

A. Yes, she did. After she was asked the question, did she have—I think I asked her did she have intercourse, I am not sure of the exact words I used, but I believe it was did she have intercourse with each of the defendants,

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and she said that she had not with one; as I recall the chronology of what happened, there was an attorney there who represented, or someone there who inquired, asked some questions on behalf of the defendants, and I haven't any idea who that is at this time, I don't remember, I—the question was asked by him, or by me, "Now are you sure that you didn't"—that this one individual, whoever it was, had no intercourse with you? Are you sure there wasn't any intercourse, she said, "No, he did not reach a climax," and I recall thereafter asking, "Did any part of his private parts enter you?" and a statement—words to that general effect; I can't remember at this time the exact words used, the answer at that time was that he did not reach a climax, but he did enter me. It was explained at that time on the question, either by me or the judge or by this other person who was there that she had understood by the word "intercourse" that you had to have a climax before that was intercourse, and she corrected her testimony in indicating there had been a penetration, but that it was short of climax.

[fol. 148] Mr. Kardy: No further questions.

Mr. Scupi: No redirect, Your Honor.

The Court: Mr. Cromwell, I would like to ask you a question or so. You referred to the word "intercourse" and she said she didn't have intercourse with one of them, and when she explained it, she referred to a climax. Was the word "rape" or "force" used in any respect in her interrogation at the preliminary hearing to which she replied, if you remember?

The Witness: I can't remember, Judge Moorman, whether the word "rape" was used, or specifically what the words that were used. She was asked fully about what happened from the time she got to—all about the event and all of the circumstances which led up to this incident. I don't remember whether I asked her any word using, any sentence using the word "rape." I don't recall that. The only—she did testify as she did at the



trial of this case about the circumstances which had led to her being taken into the woods and why she submitted.

The Court: At that interrogation of her, preliminary hearing, was there any evidence elicited from her or her witnesses to the effect that she consented to having intercourse in her own statement, with one or any of them?

The Witness: No. In point of fact, she stated that she did not.

The Court: All right, that is all.

(Witness leaves the stand.)

Mr. Forer: Your Honor, petitioners rest.

Mr. Cromwell: Lieutenant Whalen.

The Court: Now, Counsel for Petitioners, one doctor didn't appear. Of course, it was citation for contempt. Now you rested. The Court was to make it clear that if you feel he is a necessary witness, this Dr. Doudonmopoulos, that the Court will give you an opportunity to bring him in and continue it, now, but you rest?

[fol. 149] Mr. Forer: Yes.

The Court: All right.

Mr. Forer: We rest.

The Court: All right. Swear the witness.

Mr. Cromwell: Lieutenant Whalen, I believe, has already been sworn, Your Honor.

The Court: Lieutenant, of course, the oath you previously took is still binding. You may be seated.

The Witness: All right, sir.

Direct examination.

By Mr. Cromwell:

Q. Lieutenant Whalen, for the record would you state again your name?

A. Lloyd M. Whalen.

Q. And you are a Detective Lieutenant at Wheaton-Glenmont in charge of the investigation of this case?

A. Yes, sir.

**Q. You previously testified?**

**A. Yes, sir.**

**Q. At any time during your investigation of this case, or at any time when you had occasion to consider this case with the State's Attorney's office, or members of the Police Department under your supervision, did you, or to your knowledge, did anyone in the Police Department tell any witnesses in this case to lie?**

**A. No, sir.**

**Q. Did you, or did anyone in the Police Department to your knowledge withhold evidence of which you thought—evidence which you told us; did you withhold any thing from us as the State's, Mr. Kardy and myself and the prosecution in this case?**

**A. No, sir.**

**Q. Were all of the facts which you knew and understood reported in the police report?**

**A. That is correct.**

**Mr. Cromwell: That is all.**

Witness.

Jones Ramsey stated that she is 39 years old. Her birth day is in February. She understands what it is to be a

Witness.

Witness.

Mrs. Ramsey stated that she lives at 3303 Ogleshorpe St., Hyattsville. She has three married children, and Joyce



[fol. 149a]

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

PETITIONERS' EXHIBIT No. 2

Misc. No. 3005

*James V. Giles and John G. Giles,**Petitioners,**Warden of the Maryland State Penitentiary,**Respondent.*

### PERMISSION TO EXAMINE JUVENILE COURT RECORDS

I hereby give permission (if said permission be deemed necessary) to the Court and counsel for both sides in the above-captioned matter to examine all records of the People's Court for Juvenile Causes of Montgomery County, Maryland, pertaining to Joyce Carol Roberts; to Evelyn Purdon, Clerk of said People's Court, or her agent, to produce and make available said records for use, including introduction into evidence, in the above-captioned matter; and to any persons with knowledge thereof to testify about any aspect of the proceedings in said People's Court involving said Joyce Carol Roberts.

ALFRED D. NOYES,

By Mr. C. People's Court Judge for Juvenile

Causes of Montgomery County, Md.

Dated: July 20, 1964.

Q. And you are a Detective Lieutenant at Wheaton  
 Glenmont in charge of the investigation of this case?

A. Yes, sir.

[fol. 149b] PETITIONERS' EXHIBIT 3 FOR ID.

**JUVENILE COURT FORMAL RECORD #1606-61**

**Joyce Roberts/w/15 yrs.  
3803 Oglethorpe St.  
Hyattsville, Maryland**

**Mo: Marion  
Fa: John**

**9/5/61 CASE IN COURT:** Those present: Joyce Roberts, Mrs. Roberts, Mr. Lynn Adams, Det. Whelan, Judge Alfred D. Noyes, Norine Malless.

**OCCASION FOR HEARING:** Out of parental control and living in circumstances endangering her well-being; and also that said child is a necessary witness in behalf of the State in regard to a criminal case pending in the Circuit Court for Montgomery County.

**SUMMARY OF HEARING:** COURT advised that this came to this Court from the State's Attorney Office because of difficulties at home, and also she was a state witness in a case where two adults are charged, and it seems her situation is one where she has been at the hospital for taking pills and there is concern about her. This Court has to decide if she should be placed temporarily at Montrose for her own safety and also make sure she will be a State Witness.

**JOYCE ROBERTS** stated that she is 16 years old. Her birthday is in February. She understands what it is to be a state witness.

**ALL TESTIFYING WITNESSES SWORN COLLECTIVELY**

**Mrs. Roberts** stated that she lives at 3803 Oglethorpe St., Hyattsville. She has three married children, and Joyce



is the only one at home. Her husband lives at home and [fol. 149c] she knows he is here today, and he trusts her judgment and the Lt's and the Court's. Mother brought Joyce here today at the request of Lt. Whelan.

Lt. WHELAN stated that the State Attorney requested she be brought here to hold in protective custody until hearing.

Mrs. ROBERTS stated that she is agreeable to it, and wanted Joyce to understand it was not for punishment. She was in care of a psychiatrist until released so she still needs medical care. She was in the hospital for nine days—Prince Georges County Hospital. Dr. Dumobolis is the psychiatrist.

Mr. ADAMS stated that he spoke with the Dr. and the Dr. said that Joyce needed treatment and could benefit from it, and was in a way asking for it. It would have to be over a period of time. About going to Montrose, the Dr. stated that he would rather the parents made that decision themselves, and it would be all right as far as the Dr. was concerned.

Court advised that there is a psychiatrist comes to Montrose and if the Court and Montrose could get a statement from this Dr. perhaps she could get some treatment while there.

Mrs. ROBERTS stated that Joyce has a prescription she is to use for two weeks, but could not get it this morning since it had to be made up.

JOYCE ROBERTS stated she wanted to die and there was nothing to live for. She still feels that way—life doesn't make any difference to her—she does not see any hope of living a happy life. She took 30 bufferin pills and was sent to the hospital and also took some little pink pills from the medicine cabinet. Joyce Roberts stated that part of their problem is difficulty at home. There is a problem because Mr. Roberts is much older than Mrs. and a lot of

[fol. 149d] it stems out of his jealousy and talk of sex etc. It is "one brewing mess" all the time. He feels his job is to provide and that is all. It goes on and on until he tears things up, and then he replaces them. The other three children were able to stand it somehow. He is Joyce's father.

JOYCE ROBERTS stated that she got along all right at school last year.

Cover wondered if she should go to Montrose or to Springfield.

Mr. ADAMS stated that he spoke with the family physician and the psychiatrist, who said he felt he was blocked because the parents have not gone to see him.

Mrs. Robbins stated that she left messages at the hospital and with her doctor, but she never heard anything.

Joyce Roberts stated that he never came to see her in four days. Joyce could not get contact with him. b

**Lt. WHELAN** stated that **Dr. Connor** at the Hospital said **Montrose** or **Rosewood** would be all right.

**DISPOSITION:** Joyce Roberts is placed under the jurisdiction of the Court and committed to Montrose School for Girls with authorization to transfer to any Institution in Maryland. Case continued pending further orders of the Court.

4/30/62 Closed—No longer residing within the jurisdiction of the Court.

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 4. STATE  
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 6. PHONE  
 7. TELETYPE  
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 10. DATE  
 11. SIGNATURE  
 12. PRINTED NAME  
 13. POSITION  
 14. COMPANY  
 15. INDUSTRY  
 16. PRODUCTS  
 17. SERVICES  
 18. MARKETING  
 19. SALES  
 20. RESEARCH  
 21. DEVELOPMENT  
 22. MANUFACTURING  
 23. LOGISTICS  
 24. FINANCE  
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 26. COMPLIANCE  
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 32. RECREATION  
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 191. INFORMATION  
 192. COMMUNICATIONS  
 193. TRANSPORTATION  
 194. ENERGY  
 195. WATER  
 196. WASTE  
 197. CLIMATE  
 198. ENVIRONMENTAL  
 199. SAFETY  
 200. HEALTH  
 201. WELFARE  
 202. EDUCATION  
 203. RECREATION  
 204. ARTS  
 205. CULTURE  
 206. RELIGION  
 207. PHILOSOPHY  
 208. SCIENCE  
 209. TECHNOLOGY  
 210. INFORMATION  
 211. COMMUNICATIONS  
 212. TRANSPORTATION  
 213. ENERGY  
 214. WATER  
 215. WASTE  
 216. CLIMATE  
 217. ENVIRONMENTAL  
 218. SAFETY  
 219. HEALTH  
 220. WELFARE  
 221. EDUCATION  
 222. RECREATION  
 223. ARTS  
 224. CULTURE  
 225. RELIGION  
 226. PHILOSOPHY  
 227. SCIENCE  
 228. TECHNOLOGY  
 229. INFORMATION  
 230. COMMUNICATIONS  
 231. TRANSPORTATION  
 232. ENERGY  
 233. WATER  
 234. WASTE  
 235. CLIMATE  
 236. ENVIRONMENTAL  
 237. SAFETY  
 238. HEALTH

1944

☐ Mr. [Name]  
☐ Mrs. [Name]  
☒ Miss [Name]



**Paranormal Experiments** at the school last year. Joyner Roberts stated that she got along all right.

Mr. Roberts stated that she still has a headache and is not able to work with the family. Joyner Roberts stated that she got along all right.

(See Opposite)

Mr. Roberts stated that she still has a headache and is not able to work with the family. Joyner Roberts stated that she got along all right.

Mr. Roberts stated that she still has a headache and is not able to work with the family. Joyner Roberts stated that she got along all right.

Mr. Roberts stated that she still has a headache and is not able to work with the family. Joyner Roberts stated that she got along all right.

[104] [107]

## ADMISSIONS RECORD - PRINCE GEORGE'S GENERAL HOSPITAL, CHESTER, ENGLAND

[illegible]

CONTRACTOR'S NAME St. Vincent

DATE OF BIDDING SEP 4 1961

COMPLETION OF BIDDING 9

<input checked="" type="checkbox"/>	RECOVERED	<input type="checkbox"/>	ON HAND
<input type="checkbox"/>	REMOVED	<input type="checkbox"/>	ON HAND
<input type="checkbox"/>	UNRECOVERED	<input type="checkbox"/>	ON HAND
<input type="checkbox"/>	NOT RECOVERED	<input type="checkbox"/>	ON HAND
<input type="checkbox"/>	REMOVED ONLY	<input type="checkbox"/>	ON HAND
<input type="checkbox"/>	REMOVED	<input type="checkbox"/>	ON HAND
<input type="checkbox"/>	REMOVED	<input type="checkbox"/>	ON HAND

THE 151 process under the Fourteenth Amendment



[fol. 149]

PHYSICIAN'S REPORT

1961-1962

PHYSICIAN'S REPORT - (To be filled out by the physician)

1. Chief Complaint: *Depression, loss of interest in life*

2. History of Present Illness: *For the past 6 months, I have been feeling depressed, losing interest in life, and having trouble sleeping. I have lost about 10 pounds in the last 6 months. I am not eating and am not sleeping. I am not interested in anything. I am not going to work. I am not going to school. I am not going to see anyone. I am not going to do anything. I am not going to live.*

3. Family History:

Relative	Age	Date of Death	How and cause of death	Age at death	Yes	No	(Check each box)	Remarks
Father	60	Dead					Had Tuberculosis	
Mother	74	Dead					Had Syphilis	
Sister	18	Dead					Had Cancer	
Brother	10	Dead					Had Kidney trouble	
Sister	10	Dead					Had Heart trouble	
Sister	10	Dead					Had Stomach trouble	
Sister	10	Dead					Had Rheumatism	
Sister	10	Dead					Had Arthritis, New York State	
Sister	10	Dead					Had Epilepsy (No)	
Sister	10	Dead					Convulsed Seizure	
Sister	10	Dead					Was Mentally Ill	

4. Have you ever had or have you now (Please check in left of each item)

Yes	No	(Check each item)	Yes	No	(Check each item)	Yes	No	(Check each item)	Yes	No	(Check each item)
		Alcohol Abuse			Drugs			Chronic Pain			"Tired" or Exhausted
		Alcoholism			Tuberculosis			Diabetes			Fatigue
		Alcoholism (Past)			Smoking habits (Check present)			Appetite			Nausea
		Smoking, Pipes, John			Arthritis			Pain or Spinal Disease			Paralysis (See elsewhere)
		Smoking			Stomach trouble			Frequent or painful urination			Epilepsy or Fits
		Smoking pipe			Pain or pressure in chest			Kidney stones or blood in urine			Can't walk, run or do things
		Alcohol or other			Chronic cough			Stomach or Abdominal pain			Frequent trouble sleeping
		Alcohol or other			Polyps or protrusion from mouth or nose			Stomach or Abdominal pain			Frequent or troubling urination
		Alcohol or other			Head or low back pain			Feeling of fullness or bloating			Depression or nervous worry
		Alcohol or other			Change in hair			Stomach pain or fullness			Loss of memory or concentration

NAME PLATE

ROBERTS, JOYCE C. 196066

8/27/61 DR. COLLIER HED

1-3173 TO F 3 FOOT 16

PSYCHO-PATHIC PHYSICIAN CHI

3903-34LSH1022 ST. CATSVILLE

19/62/0 Y

PHIDGE GEORGE'S GENERAL HOSPITAL

Stevens, Maryland

HISTORY

[fol. 150] IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MEMORANDUM AND ORDER GRANTING PETITION FOR RELIEF  
UNDER THE POST CONVICTION PROCEDURE ACT

Miscellaneous Petition No. 3006

**JAMES V. GILES,**

**JOHN G. GILES,**

Hearing Under Post Conviction Procedure Act.

**Joseph Forer, Hal Witt, and Richard J. Scupi, for Petitioners.**

**Leonard T. Kardy, State's Attorney and James J. Cromwell, Deputy State's Attorney, for State of Maryland.**

On December 5, 1961, in the Circuit Court for Montgomery County, the Petitioners, James V. Giles and John G. Giles, were convicted by a jury for the crime of rape. They were sentenced to death. The Court of Appeals affirmed the convictions July 18, 1962. *Giles et al. v. State*, 229 Md. 370. Their appeal to the Supreme Court of the United States was dismissed. 372 U.S. 767. On November 16, 1962, Petitioners filed a Motion for a new trial based on newly-discovered evidence. The Motion was denied upon the ground that Rule 567 of the Maryland Rules requires such a motion to have been filed within three days. The denial was affirmed by the Court of Appeals, *Giles v. State*, 231 Md. 387.

On October 24, 1963, Governor J. Millard Tawes commuted their sentences to life imprisonment.

Petitioners now seek relief under the Post Conviction Procedure Act, Art. 27, Sec. 645A. Their Petition with an oral amendment raised four contentions and alleged that they are unlawfully imprisoned because of denial of due [fol. 151] process under the Fourteenth Amendment to the



United States Constitution. The grounds for relief are as follows:

1. The State failed to disclose to the defense useful evidence and information.
2. That the State's witnesses committed perjury with the knowledge of the State.
3. That under Rule 567 the three-day limit upon motions for a new trial based upon newly-discovered evidence is unconstitutional and prevented Petitioners from moving for a new trial upon new evidence available to them.
4. That Petitioners were denied the "Assistance of Counsel" in violation of the Sixth Amendment to the United States Constitution, made obligatory upon the State by the Fourteenth Amendment, in that at Petitioners' trial there was admitted evidence of statements made by them to the police after their arrests in response to interrogations designed to elicit incriminating statements, although petitioners had not been warned of their constitutional right to remain silent.

Before proceeding to a discussion of the foregoing contentions the facts are briefly summarized as follows:

At the trial the principal witnesses for the State were the prosecutrix and Stewart Foster, who had been her escort on July 20, 1961, the night of the alleged rape. The State's evidence was to the effect that Petitioners and a third man, Joseph E. Johnson, Jr., came upon the car occupied by the prosecutrix and Foster, parked on a secluded country road. The evidence that follows is in dispute.

The State claims that the three men demanded the girl. Upon refusal, a window was broken and Foster was struck in the face by a rock. The girl ran from the car for a short distance. She was followed and allegedly raped by the Petitioners and Johnson.

The defense claimed, first, that the assault upon Foster was provoked by obscene racial remarks by Foster in re-

2  
response to a request of Petitioners for cigarettes, and second, [fol 152] that John Giles never had intercourse with the girl, and third, that the girl not only consented to intercourse with the other two, but suggested and invited it.

It is obvious that the credibility of the State's key witness is in issue and crucial if the Petitioners are to have any hope of success.

THE PETITIONERS CLAIM THAT THE STATE FAILED TO DISCLOSE TO THE DEFENSE INFORMATION WHICH WOULD HAVE AFFECTED THE CREDIBILITY OF THE PROSECUTOR; THAT SUCH FAILURE ON THE PART OF THE STATE IS A VIOLATION OF DUE PROCESS, AND IS, THEREFORE, GROUNDS FOR RELIEF UNDER THIS ACT.

In the case of *Strosnider v. Warden of the Maryland Penitentiary*, 228, Md. 663, the Court held that suppression by the State of evidence tending to exculpate a defendant is a ground for relief under the Post Conviction Procedure Act.

The petitioners rely primarily on the case of *Barbee v. Warden*, 331 Fed. 2d 842. This case supports the proposition that the State has a duty to disclose significant exculpatory information to the defense; that the fact that the police and not the prosecution were aware of such information does not neutralize the error. It was further held that there was no need to show that the defense requested such information. The *Barbee* case, in discussing what would constitute exculpatory evidence, quotes from the case of *Griffin* against *U.S.*, 87 Appeals D.C. 172. "The case emphasizes the necessity of disclosure by the prosecution of evidence that may reasonably be considered admissible and useful to the defense. When there is substantial room for doubt, the prosecution is not to decide for the Court what is admissible or for the defense what is useful."

The petitioners contend that the State failed to disclose information that would come within the rule in the *Barbee*



and Griffin cases. They suggest many points, but it is our [Vol. 153] view that the significant ones are as follows: First, that the prosecutrix made a claim of another rape between the time of the alleged offense and the trial, and second, that after the alleged rape and before trial, the prosecutrix had taken an overdose of sleeping pills in an attempt to commit suicide.

The petitioners have shown that the police were aware of these two points. In testimony at this hearing Detective Lieutenant Lloyd M. Whaler of the Montgomery County Police Department in answer to the following questions stated:

Q. Did you hear that there had been a charge that Joyce Roberts had been raped by two men in August of 1961, just before she took these pills?

A. I received a call from the family stating that the girl had been raped.

Q. Did you hear that Joyce Roberts, sometime in late August, 1961, had attempted to commit suicide?

A. I had knowledge of—she had taken some sleeping pills.

Q. You knew that there was soon coming up a trial of John and James Giles on charges that they had raped Joyce Roberts on July 20, 1961?

A. Yes, sir.

Further, the Hyattsville City Police Report by Corporal K. Moureau, submitted as an exhibit to the Petition states: "Joyce Roberts was put in hospital on August 27, 1961, approximately 5:30 a.m., and is now held for a mental patient. This was reported to Prince Georges County Det. Wheeler, who is working on the case. Joyce Roberts is in Prince Georges Hospital due to overdose."

Also, the Prince Georges County Police Report made by Det. L. R. Wheeler, Exhibit 25 of the Petition, states: "At

3:40 p.m. on September 1, 1961, the alleged victim in this case was interrogated by the undersigned in the presence of the nurse in charge of the wing—on A Wing in Prince [fol. 154] Georges Hospital. At this time this victim is being held in A Wing—Prince Georges Hospital for mental observation as she had allegedly attempted suicide in early A.M. of August 27, 1961.

The knowledge of these police officers is imputed to the prosecution, (*Barbee v. Warden*) and the record indicates that this information was not disclosed to the defense.

The question that this Court must now decide is whether the above information in relation to the alleged attempted suicide and the second complaint of rape can "be reasonably considered admissible and useful to the defense."

With reference to the overdose of sleeping pills taken by the prosecutrix, it appears to this Court that such information does fall into the above category; that is, that it can be reasonably considered admissible and useful to the defense.

Our research has failed to uncover any Maryland cases on this point. The question has been considered in a number of other courts, both Federal and State, and the results of those considerations are as follows:

First in *United States v. Hiss*, 88 Fed. Supp. 559, The United States District Court for the Southern District of New York held that a witness may be discredited by evidence of insanity or mental derangement, and such evidence is not merely for the judge to decide on the preliminary question of competency but goes to the jury to affect credibility. This case involved the prosecution of Alger Hiss. The mental stability of the Government's key witness, Whitaker Chambers, was being questioned.

In *People v. Cowles*, 224 North Western, 387, a case that went to the Supreme Court of Michigan in 1929, the Court held that evidence offered to prove acts of the prosecutrix of sexual perversion and lascivious conduct was erroneously excluded. This was a prosecution for statutory rape and the Court further stated that such evidence bearing



on the weight of her testimony and on the question as to [fel. 153] whether her mind was so warped as to lead her to fabricate a claimed sexual experience should have been admitted.

In the case of *State v. Poolos*, in the Supreme Court of North Carolina, 85 S.E. 2d 342, 1955 case, the Court held that in a prosecution for unlawfully and willfully maintaining and operating a building for the purpose of prostitution, the question propounded on cross-examination to the State's witness as to whether she had tried on one occasion to commit suicide was permissible for the purpose of impeaching the witness' credibility. In this case the defense counsel asked the prosecution's witness if on one occasion she had tried to commit suicide by eating some bellhops.

In the 1961 case of *Poicell v. Wiman*, 287 Fed. 2nd 275, The United States Court of Appeals for the Fifth Circuit dealt with this question in a habeas corpus proceeding. In this case the defendant had been accused of robbery and had been tried and convicted. One of the State's key witnesses was an accomplice of the defendant in the robbery. He had pleaded not guilty by reason of insanity. The State had evidence to the effect that this prosecuting witness had been confined in mental institutions in three different states. The State suppressed this information from the defense and the Court held that this witness' mental condition was a crucial issue. It further stated that evidence of his insanity, if not sufficient to establish incompetence as a witness, would have gone to the weight and credibility of his testimony.

Our research has uncovered one case whose holding is contrary to the above cases. This is the case of *Garrett v. State of Alabama*, 105 S. 2d 541, 1958. It concerned a prosecution for second degree murder. The Supreme Court of Alabama held that the trial court was not in error in refusing to permit the defendant to ask the state's witness the following questions:

Q. Did you ever see [redacted] before?

287  
[The fact is that since this trouble your mind has been affected, hasn't it?]  
[The fact is that since this trouble, you have been in a hospital, haven't you?]  
[fol. 156] "You have been, since this crime, you have been in a hospital for treatment for a nervous mental condition?"

The Court pointed out that the credibility of the State's witness could be attacked by showing a mental derangement existing at the time of the trial. But it further stated that questions such as these would merely tend to show a mental condition or mental derangement at a time prior to the trial, or not contemporaneous to the matter being testified about, are not admissible as impeaching the credibility of a witness. The court goes on to say that it is no objection either to the competency or credibility of the witness, that he may be subject to fits of derangement if at the time the witness is offered it appears—and this is for the Court not the jury to decide—that he is sane.

An analysis of all of the above cases leads the Court to conclude that the majority rule in this country would allow evidence tending to show mental derangement of a witness to be admitted for the purpose of impeaching that witness' credibility.

The second important point with reference to suppression of information by the state concerns the fact that the prosecutrix has made a second claim of rape between the time of the alleged offense and the trial. Petitioners argue that evidence of such a nature is admissible for purposes of impeachment in a rape case. The case of *Smallwood v. Warden*, 306 F. Supp. 325 is used as an authority to support this contention.

The *Smallwood* case was a habeas corpus proceeding in the United States District Court for Maryland. The petitioner had been convicted and imprisoned for rape. The main basis for his petition was inadequate representation at his trial by his counsel. The petitioner also claimed that



vital information had been withheld from his counsel by the prosecution. As the facts developed it was shown that the state's attorney had information concerning the history, physical condition and reputation of the prosecuting witness. Specifically, they knew that she had claimed that she had been raped some eighteen years before.

[fol. 157] The Court held that even though the State's Attorney did not act with any improper motive, that he did suppress this evidence. The Court further stated that the motive was immaterial if the evidence was vital, that is, was likely to have affected the result of the trial. This evidence, taken as a whole, justified a serious doubt as to the chastity of the prosecuting witness and might well have affected the results of the trial. The Court held that its suppression was prejudicial.

It is significant to note that in the Smallwood case the second claim of rape took place some eighteen years before, whereas in this case the alleged rape occurred before the trial but after the event that led to the defendants' prosecution.

With reference to the above two points concerning the attempted suicide and the second claim of rape, it is not necessary for this Court to hold, and we do not hold, that such evidence is or would be admissible. However, after a thorough examination of the law in point, we do hold that such information could be reasonably considered admissible and useful to the defense.

With reference to the same basic point of suppression of information by the state, the Petitioners raise three other points:

First, that tests had indicated that while both Petitioners had a venereal disease at the time of the alleged rape, the prosecutrix did not have one when she was examined soon thereafter.

Second, that the prosecutrix was an extraordinarily unchaste and promiscuous girl.

Third, that the prosecutrix was on probation at the time of the offense.

We feel that all three of these points are without merit for several reasons, the most important of which is that the defense knew of the above three points at the time of the trial.

The fact that the defendants had knowledge of these points has been illustrated by the defense counsel's cross-[fol. 158] examination of the state's witnesses at the trial, and the direct testimony of the petitioners themselves and the fact that the defense counsel had an opportunity to, in fact, did examine the state's entire file, including the police report prior to trial.

Thus the effect of the petitioners' claim is that the State suppressed information which the defense was, in fact, aware of at the time of the trial. We feel that this contention is without merit.

## II.

**THE SECOND MAJOR CONTENTION OF THE PETITIONERS CONCERNS A CLAIM THAT STATE WITNESSES COMMITTED PERJURY WITH THE KNOWLEDGE OF THE STATE.**

First, they allege that the prosecutrix' escort, Stewart Foster, testified that he and a companion had their bathing suits in the car. The police officer who searched the car stated that he had not found any bathing suits in it and his companion stated at the hearing that he did not have his suit in the car.

It is difficult for this Court to understand how the above facts are important to this case. The mere fact that the police officer did not find the bathing suit in the car does not prove that Foster was lying and the location of his bathing suit has no bearing on the crucial facts alleged by the State. Furthermore, Foster stated at this hearing that he thinks he might have been wearing it.



Second, the Petitioners contend that Det. Sgt. Stanley Harding committed perjury when he denied that the police had told him that only two boys had attacked her. The Petitioners attempted to prove this perjury by offering contradictory statements by the sister and mother of the defendants. The state has explained the confusion in this area by showing that the victim thought that rape required both penetration and emission. She stated that one of the defendants did not have an emission but definitely had penetration. This explanation sounds reasonable to this Court, and we do not feel that the petitioners have proved that perjured testimony was offered by the State in this regard.

[fol 159] Third, petitioners again claim that Stewart Foster perjured himself when he denied that he cursed the petitioners. To prove this, they offer testimony by one John Patrick Stevens who states that Foster had admitted to him that he had committed perjury in making such a denial, and that he had done so in accordance with the suggestions of State officials. At the hearing, both Foster and the State officials denied this allegation and this Court feels that Stevens' testimony is not sufficient for us to reasonably infer that the State was guilty of any wrongdoing. The petitioners cannot satisfy this Court that the State officials were guilty of such gross malfeasance by offering merely secondhand information based on an out-of-court statement by a person whose credibility the petitioners themselves have attacked.

For the above reasons this Court holds that the points raised with reference to the allegation that the State witnesses committed perjury with the knowledge of the State are without merit.

### III.

THE THIRD MAJOR POINT THAT THE PETITIONERS RAISE IS CONTAINED IN THE ALLEGATION THAT MARYLAND RULES 759(2) AND 567(a) ARE UNCONSTITUTIONAL.

In effect they provide that a Motion for New Trial shall be filed within three days after the reception of a verdict. As pointed out in the State's brief, the Court of Appeals of Maryland has decided this specific question against the petitioners. 231 Md. 387. The Court holds that this contention is also without merit.

### IV.

IN THEIR FOURTH MAJOR POINT PETITIONERS ALLEGE THAT THEY WERE DENIED THEIR CONSTITUTIONALLY PROTECTED RIGHT TO COUNSEL BY THE ADMISSION INTO EVIDENCE AT THE TRIAL OF STATEMENTS MADE BY THEM TO THE POLICE.

The petitioners rely on the recent United States Supreme Court decision of *Escobedo v. Illinois*, 34 S. Ct. 1758, June 22, 1964.

[fol. 160] The case of *Parker v. Warden*, --- Md. ---, 203 A. 2d 418, discusses the effect of *Escobedo* and, without deciding whether it is effective retrospectively, they distinguish it on the grounds that it was not alleged or shown that counsel was ever requested by the defendants prior to a brief interrogation by the police. The facts here are similar to the *Parker* case in that there was no request for counsel or permission to consult with anyone else.

For this reason we feel that the petitioners' argument in this regard is also without merit.

### CONCLUSION AND ORDER

It is the opinion of the Court, for the reasons stated herein, that petitioners were denied due process of law under the Fourteenth Amendment to the Constitution of the United States in that the State withheld from the de-



fense and suppressed both the evidence concerning the second rape complaint of the prosecutrix and the evidence relative to her alleged attempted suicide and emotional disturbance, and that they are entitled to relief, on their Petition, it is, therefore, this 10th day of November, 1964

ORDERED that the Petitioners, James V. Giles and John G. Giles, be, and they are hereby granted a new trial, and it is further

ORDERED that the Petitioners be delivered to the Montgomery County Jail and held in close confinement to await their trial, unless the State appeals the Order herein within thirty days from the date of this Order, in which event the Petitioners shall remain in the custody of the institution where they are presently confined.

Walter H. Moorman, Judge.

[fol. 161]

IN THE COURT OF APPEALS OF MARYLAND

No. 443

September Term, 1964

STATE OF MARYLAND,

JAMES V. GILES and JOHN G. GILES,

Hammond, Horney, Marbury, Sybert, Oppenheimer, Barnes, Carter, J. DeWeese (specially assigned), JJ.

OPINION BY CARTER, J.—Filed: July 13, 1965

[fol. 162] This is the third time the appellees, James V. Giles and John G. Giles, have been before this Court in

connection with matters pertaining to their convictions for rape. In *Giles v. State*, 229 Md. 370, 183 A.2d 359 (1962), appeal dismissed 372 U.S. 767 (1963), we affirmed convictions for rape committed by the appellees on a sixteen year old girl in Montgomery County on July 20, 1961. We subsequently affirmed the denial of a motion for a new trial based on newly discovered evidence in *Giles v. State*, 231 Md. 387, 190 A.2d 627 (1963). The case at bar is an appeal by the State from the action of the Circuit Court for Montgomery County in granting the appellees a new trial on the rape charge under the provisions of the Post Conviction Procedure Act after it had ruled as a preliminary matter that the appellees were authorized to take depositions in post conviction proceedings. The new trial was awarded following the finding of the lower court that the prosecution had suppressed and withheld evidence from the appellees in violation of their constitutional right to due process.

On this appeal the State raises two questions. First, it contends that because the rules relating to the taking of depositions in civil proceedings are not applicable to proceedings under the P.C.P.A., it was error to permit the taking of depositions. The primary contention of the State, however, is that the new trial was improperly granted for two reasons. One, that the failure of the prosecution to turn over to the defense information it had pertaining to an alleged rape complaint, concerning an incident involving [fol. 163] the prosecutrix (but not the appellees) that occurred after the rape for which the appellees were convicted but before the trial of their case, and, two, that the neglect to inform the defense of an alleged suicide attempt by the prosecutrix following the alleged rape incident, also before the trial of the charges against them, did not deny the appellees their right to due process under the facts and circumstances of this case.

Aside from the questions presented by the State, the appellees, without having filed a cross-appeal, raise two questions decided adversely to them at the hearing below. They contend that Rule 759 a, together with Rule 567 a, requiring



motions for a new trial in a criminal case to be filed within three days after verdict is a denial of due process; and that the admission into evidence at the trial of the original case of statements made by them when they were prime suspects, without advising them of their right to remain silent, and at a time when they were without counsel, was also a violation of due process. While the new trial was granted on the basis of the suppression of evidence relating to the alleged rape complaint and alleged suicide attempt the appellees would have no review of all evidence concerning the sexual promiscuity of the prosecutrix, her claimed near probation status at the time of the rape, and her mental condition and health on the theory that evidence pertaining to these matters was also suppressed.

The undisputed and disputed facts surrounding the incident [fol. 164] of July 20, 1961, which led to the convictions for rape were set forth in *Giles v. State, supra* (229 Md.). That case disclosed that on July 20, 1961, Joyce Roberts (the prosecutrix) and Stewart Foster were approached by three young colored males as they sat in an automobile in a secluded spot in Montgomery County. An argument ensued which resulted in the smashing of the automobile windows by the intruders and the unlocking of the doors of the vehicle. Stewart tried to ward off the attack but was knocked unconscious. Joyce got out of the vehicle and fled into the woods where, after a short distance, she tripped and fell. She hid in the underbrush but shortly thereafter was discovered by the three youths. She claimed that all three then had intercourse with her against her will and without her consent and that she put up little resistance because it appeared obvious to her it was futile to do so. John Giles claimed that after he found the prosecutrix she insisted he have intercourse with her but he declined. James Giles testified that the prosecutrix invited all three of them to have intercourse with her and that she specified the order in which they were to do so, and when his act was interrupted by lights from a police car all three fled the scene. Both of the Giles brothers testified that the prosecutrix told them

she would have to say she had been raped if they were caught in the woods because "she was on a year's probation" or "was in trouble." Subsequent to their arrest, the appellees gave statements to the police in which James admitted he had intercourse with the girl but John denied such an act.

[fol. 165] Sometime after the affirmance of the rape convictions we had before us the appeal by the appellees from a denial of a motion for a new trial based on newly discovered evidence. The claimed newly discovered evidence primarily involved the testimony of Stewart Foster at the criminal trial and extrajudicial statements made by him to a girlfriend concerning the person or persons responsible for provoking the attack on the automobile in which Foster and the prosecutrix were sitting prior to the rape. Based on the rule requiring motions for a new trial in criminal cases to be made within three days after verdict we affirmed the denial of the motion. Subsequent to this the death sentences imposed on the appellees were commuted to life imprisonment. Thereafter relief was sought by the appellees under the P.C.P.A. which resulted in this appeal by the State from the granting of the relief sought.

At the hearing in the post conviction proceeding it was shown that about September 1961 a member of the Montgomery County Bar was appointed to represent the appellees as indigent defendants. He made an investigation of the case which included a discussion of the matter with the State's Attorney for Montgomery County and an examination of the prosecution's entire file, including the police report. While counsel for the appellees was prohibited from discussing the case with Joyce Roberts by her mother, he knew the facts surrounding the alleged consent of the prosecutrix from his discussions with the Gileses. Although he tried to examine the records of the juvenile courts in Montgomery and Prince George's Counties, the attorney was not permitted to see those records.

The most pertinent evidence adduced at the post conviction hearing involved an alleged suicide attempt by the



prosecutrix and an alleged false rape claim. It was shown that on August 26, 1961, about five weeks after the rapes by the appellees and Joseph Johnson, the prosecutrix went to a party in Prince George's County and that when she entered a bathroom a boy followed her and had intercourse with her against her will. The extent of her resistance was to remove his hands from her body several times. Shortly thereafter another boy had intercourse with her in the yard of the premises where the party was being held which was against her will, but she offered no resistance to this act. On previous occasions the prosecutrix had had intercourse with one of the boys and would have consented to both acts on this occasion but for the fact she was fearful they would tell other boys at the party and they would all want to do the same thing. The following morning Joyce was admitted to the Prince George's General Hospital after having taken an overdose of bufferin tablets and sleeping pills in what was diagnosed as an attempted suicide. The above facts were brought out at the post conviction hearing by the testimony of Sgt. Wheeler of the Prince George's County police who interviewed the prosecutrix in the hospital on August 30, 1961, after he had received a complaint from Joyce's father that she had been raped at the party on August 26, 1961. Joyce Roberts was not called as a witness at the post conviction hearing.

[fol. 167] While the prosecutrix was in the hospital for having taken the overdose of pills she was visited by a boyfriend who asked her why she had taken the pills. She told him she had been raped and that this was her reason for taking the pills. Without Joyce's knowledge the boy informed her mother of the incident of August 26 as related to him by Joyce. The prosecutrix' father then made a complaint of the alleged rape to Lt. Whalen of the Montgomery County police. The officer told Joyce's father to contact the Prince George's County police since the alleged rape had taken place in that county. Lt. Whalen made no investigation of the complaint nor of the facts surrounding the overdose of pills taken by Joyce of which he was also informed.

He was never affirmatively informed that Joyce had attempted suicide. Although Lt. Whalen was aware of the fact that Joyce's mother had at one time taken her to see a psychiatrist, he did not have any information that Joyce was mentally disturbed or mentally ill. Aside from not pursuing any of the facts surrounding the incident of August 26th and the taking of the overdose of pills, Lt. Whalen did not make any investigation into the character of the prosecutrix when he was investigating the rape complaint of July 20, 1961.

It was after being advised by Lt. Whalen to report the incident of August 26th to the Prince George's County police that Joyce's father made the complaint which resulted in Sgt. Wheeler's visit to the hospital. At the time of the interview Sgt. Wheeler did not know that Joyce was the complaining witness in a rape case in Montgomery County. After relating the incident that occurred at the party to [fol. 168] the police officer, Joyce informed him that she did not wish to make any complaint of rape and that she had not authorized any such complaint to be made. Based upon these statements and upon Joyce's assertion that she would refuse to testify if any such complaint was pursued, Sgt. Wheeler, with the consent of Joyce's father, marked the case "closed and unfounded."

The State's Attorney for Montgomery County testified at the post conviction hearing that prior to the trial of the criminal case he knew Joyce Roberts had been hospitalized for taking excessive drugs and, although he had no direct information of any suicide attempt he suspected the drug incident might have been connected with the occurrence of July 20, 1961. The prosecutor had been informed of a rape charge in Prince George's County involving Joyce Roberts in which the charge was made by another, but he was also aware that the charge had been investigated and dropped. With respect to the overdose of sleeping pills as indicating an attempted suicide by the prosecutrix, the records of Prince George's General Hospital disclosed that Joyce Roberts was admitted on August 27, 1961, following the



taking of an overdose of bufferin tablets and sleeping pills is a suicide attempt, secondary to "adjustment reaction of adolescence." The record showed that the prosecutrix was given an admitting diagnosis as a psychopathic personality, placed in the psychiatric ward, and discharged after nine days. The case history stated that "this present episode is result of parental arguing, incompatibility with parents, [fol. 169] and difficult adjustment." The attending physician diagnosed the condition of the prosecutrix as an adolescent reaction. In the opinion of a psychiatrist the prosecutrix was mentally ill at the time of the attempted suicide since he considered an attempted suicide by a teenager as evidence of psychopathology, a mental disorder. He recognized, however, that many conditions, not derived from mental illness, could cause a suicide attempt and that the fact the prosecutrix may have been mentally ill on August 26, 1961, would not permit an opinion as to her mental condition at the date of the trial several months thereafter.

Aside from the evidence hereinbefore set forth, several affidavits were filed at the post conviction hearing. These affidavits, executed by acquaintances of Joyce Roberts, indicated that she was a sexually promiscuous girl.

While the primary question before us concerns the suppression of evidence we shall first dispose of the two questions decided adversely to the appellees as to which they did not appeal; and the question relating to the taking of depositions in post conviction proceedings. The appellees contend they are entitled to have this Court consider the questions raised by them below as to the constitutionality of the Maryland Rule requiring motions for a new trial based on a newly discovered evidence to be filed within three days after verdict and the admission in evidence at the criminal trial of statements made by them when they were without counsel and not advised of their right to remain [fol. 170] silent. Notwithstanding the fact that these claims were overruled by the lower court and no cross appeal was taken therefrom, the appellees contend that they are entitled to have the judgment below affirmed for these reasons:

in addition to those assigned by the lower court. Although the question of whether a cross-appeal need be taken appears to be a novel one in a proceeding of this nature, closely related rulings have been made supporting the appellees' position. It has been held that an appellant is not entitled to the reversal of a judgment favorable to the appellee, even though error was committed against the appellant below, where it appears from the record that a directed verdict in the appellee's favor should have been granted. Such rulings are predicated upon the theory that no ultimate prejudice is shown to the appellant if he could not recover in any event, even though he were granted a new trial. See *Ragonese v. Hulferty*, 231 Md. 520, 191 A.2d 422 (1963), and *Texas Co. v. Washington B. & A. R. Co.*, 147 Md. 167, 175, 127 Atl. 752 (1925). Assuming, without deciding, therefore, that the appellees are entitled to reassert the contentions raised below, they lack substance for the reasons hereafter stated.

With respect to the constitutionality of Rule 567 a, requiring motions for a new trial to be filed within three days of the date of the verdict, as made applicable to criminal cases by Rule 759 a, this Court, in *Giles v. State*, *supra* (231 Md.), ruled that a motion for a new trial in respect to the subject trial, not having been filed within three days of the [fol. 171] verdict as required by Rule 567 a, was for that reason properly denied by the lower court. In so ruling, it is implicit that the rule itself was a valid and constitutional procedural requirement. Although the rules of procedure authorize a motion for a new trial, we recently noted that in the absence of state constitutional or statutory requirements, due process does not guarantee one the right to file a motion for a new trial after conviction for a criminal offense. *Brown v. State*, 237 Md. 492, 498, 207 A.2d 103 (1965). There is no merit to the appellees' attack on the three day rule.

There is likewise no merit to the contention of the appellees that they had been denied their right to counsel by the admission of statements made when they were not repre-



seated by counsel and not affirmatively advised of their right to remain silent in violation of their right to due process. This same contention was raised in the recent case of *Cowans v. State*, 238 Md. 433, 209 A.2d 552 (1965), wherein we stated that we did not interpret the Supreme Court decisions in *Gideon v. Wainwright*, 372 U.S. 335 (1963), *Massiah v. United States*, 377 U.S. 201 (1964) and *Escobedo v. Illinois*, 378 U.S. 478 (1964), "as making an affirmative advising of an arrestee of his right to counsel, before the taking of a confession, a prerequisite to its admissibility (in a State prosecution) provided, of course, that the confession was freely and voluntarily given under the totality of the attendant circumstances, or that a failure to inform, explicitly, an arrestee of 'his right to remain silent' [401.172] destroys the voluntariness of his confession and thereby renders it inadmissible." In adhering to this position, we hold that the lower court correctly refused to grant relief on the claim that the admission of statements made to the police was a violation of due process.

With respect to the authority of the appellees to take depositions in a proceeding of this nature, the lower court found that proceedings under the P.C.P.A. are civil in nature and that the rules relating to civil proceedings are applicable to them. The rules governing post conviction procedure are to be found in Rules BK40 through BK48 in Chapter 1100 titled "Special Proceedings" and not under Chapter 700 dealing with procedure in "Criminal Causes." And Rule 1000 titled "Special Proceedings—General Rules Applicable" provides that "the preceding Rules, Chapters 1, 100 to 600 inclusive and 800 are applicable to Special Proceedings dealt with in Chapter 1100, except insofar as the Rules contained in Chapter 1100 otherwise provide expressly or by necessary implication." Regardless therefore of whether the rules governing post conviction proceedings are civil in nature, there seems to be little doubt, since Rule 1000, providing that Chapter 400 (Depositions and Discovery) is applicable to Chapter 1100 (Special Proceedings),

that the authorization to take depositions in post conviction proceedings was proper, and we so hold.

The principal question involved in the case at bar relates to the failure of the prosecution to turn over to the defense prior to the trial of the criminal case information it had pertaining to the alleged rape complaint arising out of the [fol. 173] incident of August 26, 1961, and the attempted suicide. The court below found that this information could reasonably be considered admissible and useful to the defense and therefore the failure of the prosecution to disclose it, even though it may not have been withheld for an improper motive, amounted to a suppression of evidence in violation of the rights of the appellees to due process of law.

It is clear that the suppression or withholding by the State of material evidence exculpatory to an accused is a violation of due process and is ground for relief under the P.C.P.A. *Brady v. State*, 226 Md. 422, 174 A.2d 167 (1961), *aff'd*, 373 U.S. 83 (1963); *Strosnider v. Warden*, 228 Md. 663, 180 A.2d 854 (1962). The appellees contend that for the purpose of determining the applicability of the suppression rule, evidence is material if it could reasonably have been considered admissible and useful to the defense regardless of whether it is technically admissible and useful in the sense that it contradicts trial evidence. The appellees rely on *Griffin v. United States*, 183 F.2d 990 (D.C. Cir. 1950), and *Barbee v. Warden*, 331 F.2d 842 (4th Cir. 1964), and further contend that if the *Griffin* admissible and useful test is met the withholding of evidence amounts to a denial of due process if the State had knowledge of the evidence and the defense did not.

While we agree that evidence which is claimed to have been suppressed must be reasonably considered to be admissible and useful before suppression may be said to exist, [fol. 174] this is not the sole test in determining when a suppression of evidence can be said to amount to a denial of due process. Not only must the evidence withheld be admissible and useful, but it must be such, if it had been



offered in evidence, as would be capable of clearing or tending to clear the accused of guilt—i.e., it must be exculpatory. For a definition of "exculpatory" see *Dean v. State*, 381 P.2d 178 (Okla. 1963).

Although the Circuit Court of Appeals in *Griffin v. United States*, *supra*, recognized the necessity of the prosecution disclosing evidence that "may reasonably be considered admissible and useful to the defense" under the facts of that case, it is clear that the undisclosed evidence, which concerned threats of the victim toward the person accused of murder, was obviously material and exculpatory evidence to which a jury would attach significance. Likewise, in *Barbee v. Warden*, *supra*, which followed the reasonably admissible and useful language of *Griffin*, the evidence suppressed, which was a police department ballistics report to the effect that the gun found in the defendant's car and described by witnesses as similar to the one carried by him at the time of the shooting was not the gun used in the shooting, the nondisclosure was properly held to be a denial of due process in that the evidence was material and exculpatory to the accused. For holdings that the evidence suppressed must be material to the guilt or innocence of the accused or to the penalty to be imposed in order to constitute a denial of due process, see *State v. Morris*, 365 P.2d 668 (N.M. 1961) and *Brady v. Maryland*, 373 U.S. 83 [fol. 175] (1963). In *Brady*, where the accused made a request for evidence that had not been disclosed, the Supreme Court held that the suppression of evidence by the prosecution favorable to an accused was violative of due process where the evidence was material either to guilt or to punishment.

We think that in order for the nondisclosure of evidence to amount to a denial of due process it must be such as is material and capable of clearing or tending to clear the accused of guilt or of substantially affecting the punishment to be imposed in addition to being such as could reasonably be considered admissible and useful to the defense. And, as pointed out in *Barbee*, in a situation involving pas-

sive nondisclosure an inquiry must be made into the question of whether the nondisclosure may have operated to the prejudice of the accused. Certainly there should be no duty on the prosecution to disclose evidence that is available to the accused or lacking in probative value, or, in some circumstances, evidence that is merely circumstantial. See *Jordon v. Bondy*, 114 F.2d 599 (D.C. Cir. 1940) and *Butt v. Graham*, 307 P.2d 892 (Utah 1957). See also *Brady v. Maryland*, *supra*, and 60 Colum. L. Rev. 858. The defense may be as well able to explore outside sources of information as the prosecution. *United States v. Lawrenson*, 293 F.2d 880 (4th Cir. 1962).

In order to decide what evidence can be said to have been suppressed it is first necessary to determine what the prosecution was charged with knowing. As was pointed out in *Barbee*, at p. 846, "the police are also part of the prosecution [fol. 176] tion, and the taint on the trial is no less if they, rather than the State's Attorney, were guilty of the nondisclosure." It would not be unreasonable therefore to charge the prosecutor and his agents who have the duty of preparing and presenting the case, with knowledge of all seemingly pertinent facts related to the charge which are known to the police department who represent the local subdivision that has jurisdiction to try the case. Under this rule the State's Attorney for Montgomery County should be charged with knowledge of those facts known to the police department of that county. Thus all knowledge of Lt. Whalen pertaining to the prosecutrix would be chargeable to the State's Attorney. To go further would impose a practically impossible and unworkable burden on local authorities.

Applying the criteria above set forth to the facts of the case at bar, the strongest reasonable inference which the prosecution could conclude from the information known to it when considered in connection with other evidence in the case, would appear to be: that Joyce Roberts had probably been involved in some sexual activities with boys on the evening of August 26th under circumstances not amount-



ing to criminal rape, on which her father preferred rape charges; but which investigation showed were groundless; that on the same evening she had intentionally taken an overdose of sleeping pills in an attempt to commit suicide and as a result had been admitted to a hospital; and that for reasons known only to her mother, the mother had taken her daughter to a psychiatrist.

As we see it, the prosecution should disclose to the defense such information as it has that may reasonably be considered admissible and useful to the defense in the sense [fol. 177] that it is probably material and exculpatory, and where there is doubt as to what is admissible and useful for that purpose, the trial court should decide whether or not a duty to disclose exists. Assuming that there was reason for doubt on the part of the prosecution in this case as to whether the evidence known to it was reasonably admissible and useful as tending to affect guilt or punishment and that there was therefore a duty to disclose it, we think the failure of the prosecution to disclose the information relating to the alleged rape of August 26th and the subsequent suicidal attempt was not prejudicial to the appellees and did not therefore warrant the granting of a new trial on the basis of the denial of due process. We shall first consider the attempted suicide, which the lower court found to be evidence of mental derangement and admissible for the purpose of impeaching the credibility of the prosecutrix.

The attempted suicide is said to be admissible and useful for purposes of showing that the prosecutrix was mentally incompetent as a witness and for purposes of impeaching her credibility as a witness. The record, however, does not disclose any medical or other competent evidence to establish or even indicate that if the attempted suicide on August 26, 1961, had been known to the defense, together with all other facts and circumstances shown by the record, that such information could collectively constitute a legally sufficient basis upon which an opinion could be predicated that the prosecutrix was mentally incompetent as a

witness on the date of the trial in December 1961, or that her testimony was not to be believed. Although the psychiatrist called by the appellees at the hearing below testified that an attempted suicide by a teenager was in his opinion evidence of mental illness, he stated that an attempted suicide on August 26, 1961, would not permit an opinion as to the mental condition of the prosecutrix at the date of the trial. As the testimony of the psychiatrist disclosed, an attempted suicide may result from causes not connected with mental illness. The State's Attorney for Montgomery County, when he first heard of the attempted suicide, believed it may have been related to the incident of July 20, 1961. Certainly it would not be unreasonable for a jury to conclude that an attempted suicide by a teenage girl was indicative of emotional disturbance caused by an attack upon her by three young colored males. Based on the evidence relating to the attempted suicide that was claimed to have been suppressed there is nothing to indicate that the suicide attempt was material to the competency of the prosecutrix as a witness at the criminal trial or to the question of consent. Neither the case of *State v. Pooler*, 85 S.E.2d 342 (N.C. 1955), nor *Powell v. Wiman*, 287 F.2d 275 (5th Cir. 1961), relied on by the appellees are persuasive on this point. The former case was one in which a question asked a witness for the state as to a prior attempt to commit suicide was said to be proper for purposes of impeachment. In the latter case, the prosecution knowingly suppressed evidence of the insanity of a witness and of a statement made by him to the police in contradiction of his testimony at the trial. Even if evidence in the case at bar as to the attempted suicide were admissible we do not think [fol. 179] it would be material to the guilt of the appellees or the punishment to be imposed in light of the facts surrounding the attempted suicide which clearly showed that it was an outgrowth of an incident totally unrelated to the one for which the appellees were convicted of rape. Inasmuch as this evidence in no way showed the prosecutrix was mentally incompetent as a witness, or would have been



in contradiction of any of the testimony given by her at the criminal trial, we find that its probative value was such as not to have been material to the credibility of the prosecutrix and therefore the failure of the prosecution to disclose such information did not amount to a denial of due process.

With respect to both the attempted suicide and the alleged false rape claim, it is important to note that we have held that specific acts of misconduct are not admissible to affect the credibility of a witness, for credibility must ordinarily be attacked by evidence of general reputation for truth or veracity or material contradictory facts. *Boe v. State*, 133 Md. 613, 105 Atl. 867 (1919); *Shortzer v. State*, 63 Md. 149 (1885). With respect to the alleged rape claim as evidence of the prosecutrix' general reputation for unchastity, the court below found that the appellee knew of the unchastity of the prosecutrix prior to the trial of the criminal case. Where consent is at issue, specific acts of intercourse with others prior to the alleged rape are not admissible to establish lack of chastity. But evidence of general reputation for unchastity is admissible. See *Giles v. State*, 229 Md. 370, 183 A.2d 359 (1962); *Humphreys v. State*, 227 Md. 115, 175 A.2d 777 (1961); [fol. 189] *Shortzer v. State*, *supra*. By the Gileses version of the incident of July 20, 1961, as related to their attorney, the defense certainly had some question as to the character of the prosecutrix which properly could have been investigated. In view of this and as evidenced by the examination of witnesses at the criminal trial, the defense must have known of the prosecutrix' general reputation for unchastity and that she was a sexually promiscuous girl. It is difficult therefore to see how evidence of the alleged rape claim would have added anything of consequence to what the defense already knew or should have known.

The court below, in relying on *Smallwood v. Ward*, 206 F.Supp. 225 (D. Md. 1962), was of the opinion that

the rape claim was admissible for purposes of impeachment, but in that case, where the question was one of adequacy of counsel, the prosecution, unlike the case at bar, had knowledge of the history, physical condition and reputation of the prosecuting witness, all of which was said to have likely affected the result of the trial. While evidence of a rape claim may be relevant when the basis for the claim is clearly lacking, the record here shows that the prosecutrix did not make a complaint and that she cannot therefore be said to have made a false rape claim. There was in this case no evidence from which a jury could have concluded that since a false rape claim was intentionally made by the prosecutrix on one occasion it raised considerable doubt as to the validity of the claim made against the appellees. However the incident of Aug. [fol. 181] gust 26th may be interpreted it permits of no conclusion that the prosecutrix made a false rape claim. The claim was made by her father after statements made by the prosecutrix to a boyfriend were communicated to him. While Joyce freely discussed the incident with Sgt. Wheeler she denied that any rape had occurred. Thus the only possible use of the facts surrounding the alleged rape claim would be for purposes of showing the unchastity of the prosecutrix, a fact that was already known to the defense at the time of the rape trial.

The appellees, however, argue that the subsequent rape claim goes to credibility and is material to the mental illness of the prosecutrix. It is their contention that evidence of her sexual promiscuity and of the alleged rape claim shows she is afflicted with nymphomania—a type of mental illness. While evidence of nymphomania was held admissible in *People v. Bastian*, 47 N.W.2d 692 (Mich. 1951), to conclude that such an illness existed in the case at bar would be to engage in sheer speculation and conjecture. What the appellees would have us do is to take the facts presented at the post conviction hearing and to draw conclusions therefrom that are not supported by the record. Even if the prosecutrix can be said to have been suffering



from nymphomania, there is nothing to show that this made her incompetent as a witness or that she consented to the acts for which the appellees were convicted.

Although the new trial was granted by the court below solely on the suppression of evidence relating to the alleged [fol 182] suicide attempt and alleged rape claim, both of which arose out of the incident of August 26th, the appellees also claim that evidence was suppressed as to the near probation status of the prosecutrix and as to the fact that her mother had taken her to see a psychiatrist. Without prolonging an already lengthy opinion in this case which the appellees seek to retry on an appeal by the State, it will suffice to say that there is nothing in the record to show a withholding of evidence with respect to either of these matters.

We hold that the evidence held by the lower court to have been suppressed was neither material to the guilt of the appellees or to the punishment to be imposed, nor was the failure to disclose prejudicial to the accused. The non-disclosure, therefore, cannot be said to have amounted to a denial of due process.

**Order Reversed; the Appellees to Pay the Costs.**

of the incident of July 1951. The appellees claim that the prosecutrix was in a state of mental instability at the time of the incident and that she was not competent to give evidence. They claim that the evidence was suppressed as to the near probation status of the prosecutrix and as to the fact that her mother had taken her to see a psychiatrist. Without prolonging an already lengthy opinion in this case which the appellees seek to retry on an appeal by the State, it will suffice to say that there is nothing in the record to show a withholding of evidence with respect to either of these matters. We hold that the evidence held by the lower court to have been suppressed was neither material to the guilt of the appellees or to the punishment to be imposed, nor was the failure to disclose prejudicial to the accused. The non-disclosure, therefore, cannot be said to have amounted to a denial of due process. **Order Reversed; the Appellees to Pay the Costs.**

[fol. 183] IN THE COURT OF APPEALS OF MARYLAND

No. 443

September Term, 1964

STATE OF MARYLAND,

JAMES V. GILES and JOHN G. GILES

Hammond, Horney, Marbury, Sybert, Oppenheimer,  
Barnes, Carter, J. DeWeese (specially assigned), JJ.

DISSENTING OPINION BY OPPENHEIMER, J., IN WHICH

HAMMOND, J. CONCURS—Filed July 13, 1965

[fol. 184] Oppenheimer, J. files the following dissenting opinion in which Hammond, J. concurs.

The evidence admittedly withheld by the State, in my opinion, could have been of vital importance to the defense of the accused and its withholding constituted a violation of due process of law.

The appellees' defense to the charge of rape was that their assault upon the white companion of the prosecutrix was provoked by his obscene racial remarks and that the prosecutrix not only consented to intercourse with two of the appellees but suggested it and invited it. The appellees testified that the prosecutrix, prior to any acts of intercourse, had said to them that she had already had sexual

In *Giles v. State*, 229 Md. 370, 185 A.2d 359 (1962), in affirming the appellees' convictions on appeal, we referred to the conflicting evidence as to consent. The complete transcript of the testimony at the trial was introduced in the hearing under the Post Conviction Procedure Act as a result of which Judge Moorman granted a new trial. The entire testimony at the criminal trial is therefore before us on this appeal.



[fol. 185] intercourse with sixteen or seventeen boys that week and two or three more wouldn't make any difference. The appellees also testified that the prosecutrix, while consenting to intercourse, said that she was on probation and if caught by the police would have to claim that she was raped. This testimony was denied by the prosecutrix at the trial and obviously was not believed by the triers of fact who convicted the appellees.

The essential facts established at the post conviction hearing are not in dispute. Detective Lieutenant Whalen of the Montgomery County Police Department, prior to the trial of the appellees, had received a call from the family of the prosecutrix stating that she had been raped by two men in August of 1961, which was about five weeks after the acts for which the appellees were to be tried. The lieutenant had also received information that the prosecutrix had taken a number of sleeping pills and had been taken to the hospital. He had previously known that at one time the mother of the prosecutrix had taken her to see a psychiatrist. Upon receipt of the call as to the alleged rape, Lieutenant Whalen told the prosecutrix's father to get in touch with the Prince George's County Police, since the alleged rape had taken place in that county. The State's Attorney for Montgomery County [fol. 186] had also been informed before the trial of the appellees that a complaint had been made in Prince George's County that the prosecutrix had been raped by other persons after the acts for which the appellees had been charged and he was aware that the subsequent charge had been investigated and dropped. The State's Attorney had also been informed that the prosecutrix had been hospitalized for taking an overdose of drugs and assumed that she had done so intentionally. None of this information known by the police lieutenant and the State's Attorney was communicated to the court appointed counsel of the appellees prior to their trial and their counsel had no knowledge thereof.

In *Brady v. State*, 226 Md. 422, 174 A.2d 167 (1961), we held that the suppression or withholding by the State of material exculpatory to an accused is a violation of due process even if, as here, the withholding is not the result of guile. In that case, the State contended that the evidence withheld, which was an extra judicial confession or admission by a third party that he had committed the offense for which the defendant was tried, was not admissible. In delivering the opinion for the Court, Chief Judge Brune considered the authorities pro and con as to whether or not such a confession was admissible. Without coming to any conclusion as to its admissibility, Judge [fol. 187] Brune said, for the Court:

"We think that Boblit's undisclosed confession might have been usable under any of the three rules stated in *Thomas*, which we have quoted above, and hence could not be regarded as inadmissible and unusable in any manner in Brady's defense."

Judge Brune's opinion goes on to say:

"There is considerable doubt as to how much good Boblit's undisclosed confession would have done Brady if it had been before the jury. It clearly implicated Brady as being the one who wanted to strangle the victim, Brooks. Boblit, according to this statement, also favored killing him, but he wanted to do it by shooting. We cannot put ourselves in the place of the jury and assume what their views would have been as to whether it did or did not matter whether it was Brady's hands or Boblit's hands that twisted the shirt about the victim's neck. To apply the words of the Supreme Court of the United States in *Griffin v. United States*, 336 U. S. 704 at 708-709, quoted by the Court of Appeals of the District of Columbia Circuit in its opinion on remand of the case, above cited (183 F. 2d at 892), it seems to us (as it did to the Court of Appeals of the District in *Griffin*) that it would be 'too



dogmatic for us to say that the jury would not have attached any significance to this evidence in considering the punishment of the defendant Brady.

"Not without some doubt, we conclude that the withholding of this particular confession of Boblit's was prejudicial to the defendant Brady." 226 Md. at 429-30.

In the words of the Court of Appeals in *Griffin v. United States*, "when there is substantial room for doubt, the prosecution is not to decide for the court what is admissible or for the defense what is useful." [fol. 188]

In this case, the information withheld by the prosecution, in my opinion, would have been admissible, in whole or in part, on cross-examination of the prosecutrix and was clearly usable in the defense of the appellees. The lodging of a complaint of rape on behalf of the prosecutrix and the subsequent withdrawal of the complaint took place between the alleged offenses of the appellees and their trial. These facts could well have been used to support the claim of the appellees that the prosecutrix consented to intercourse with them and thereafter, as they said she had told them she might do, made an unjustified claim that she had been raped.

The withheld evidence of her attempted suicide might well have been used by counsel for the appellees to attack the credibility of the prosecutrix because of mental or emotional illness. While I have not been able to find a Maryland case deciding whether or not testimony of mental illness or emotional disturbance not amounting to insanity is admissible for the purpose of discrediting the prosecutrix in a sex case, there is authority elsewhere holding such evidence to be admissible. The suppressed information might also have been used by the appellees in an

*Taborsky v. State*, 142 Conn. 619, 116 A.2d 433 (1955). See also *United States v. Hiss* (D.C.S.D.N.Y. 1950), 88 F.Supp. 559. *Contra Garrett v. Alabama*, 268 Ala. 299, 106 So.2d 541 (1958).

(Note of the District in *Griffin*) that it would be too

[fol. 189] endeavor to show that the prosecutrix was a nymphomaniac.\*

As in *Brady*, the test is not whether the evidence clearly would have been admissible but whether it must be regarded as inadmissible and unusable in any manner in defense of the appellees. The question of actual admissibility, particularly in a case such as this, can only be passed upon in the context of actual cross-examination and proffered testimony. Such cross-examination and additional testimony might well have been admissible and, if admissible, were usable in the defense of the appellees. That is clearly sufficient.

The opinion of the majority holds that the information withheld by the State was not material evidence exculpatory to the appellees. With all deference, it seems to me that my brethren are arguing the weight of the evidence and put themselves in the place of the triers of the facts. While counsel for the appellees knew of prior acts of unchastity of the prosecutrix, the additional withheld

\* In *People v. Bastian*, 830 Mich. 457 (1951), it was held that on a trial for statutory rape the trial court was in error in sustaining an objection to a line of cross-examination which counsel for the defendant said would tend to establish that the prosecutrix was a sexual psychopath. The Supreme Court of Michigan held that the proffered testimony was relevant to the credibility of the prosecutrix, particularly if sufficient to indicate that she was a nymphomaniac. *People v. Cowles*, 246 Mich. 429, 224 N.W. 387 (1929) is to the same effect.

"Occasionally is found in women complainants, testifying to sex-offences by men, a dangerous form of abnormal mentality,—dangerous here, because it affects testimonial trustworthiness while not affecting other mental operations. It consists in a disposition to fabricate irresponsibly charges of sex-offences against persons totally innocent. The genesis and operations of this quality are sufficiently shown in the passages quoted *ante*, § 924a (character for chastity). Sometimes it is associated with unchaste conduct in the witness, sometimes not. But its nature is well known to psychiatrists and is recognizable by them. Testimony to its existence in an individual should always be receivable." *Wigmore on Evidence*, § 934a (2d ed. 1940).



evidence might have made possible a far more effective cross-examination than mere knowledge of prior acts of unchastity of itself permitted.

What has been said pertains only to the actual information known to and withheld by the State's Attorney and Lieutenant Whelan. However, this information, important as it was of itself to the defense, was also usable as the basis for further investigation. Although the prosecution did not choose to investigate further the information which had been received, if that information had been made available to the appellees' counsel, it would have been a short and logical step for him to pursue what had happened in [fol. 191] Prince George's County after the claim of the alleged rape had been made and after the prosecutrix had been hospitalized there. He could have easily ascertained the additional facts adduced at the post conviction hearing. These facts included the statements of the prosecutrix to Detective Sergeant Wheeler of the Prince George's County Police that during the preceding two years she had had numerous acts of sexual intercourse with a large number of boys and men, many of whom were unknown to her, and that she had accused two men in the Prince George's County incident of rape to explain why she took the overdose of pills, although she also told Wheeler that she would refuse to testify against the two men if they were charged with rape. The hospital record of Prince George's General Hospital showed the diagnosis of attempted suicide by the prosecutrix and the admitting diagnosis of psychopathic personality. An interview with Dr. Connor, who testified in the post conviction hearing, would have readily shown that the prosecutrix had been confined in the hospital's psychiatric ward for nine days.

\*Testimony that a witness has been confined in a mental hospital has been held admissible on the issue of credibility. *Walley v. State*, 240 Miss. 136, 126 So.2d 584 (1961); *People v. Kirkes* (Cal. Dist. Ct. App. 1962) 243 P.2d 816.

[fol. 192] This additional information would have materially strengthened the usable lines of defense inherent in the information actually withheld by the prosecution. It seems clear to me that the facts which the State knew and did not communicate would have been helpful to counsel for the appellees in pursuing the new important lines of inquiry obviously indicated. The State cannot claim the withheld information was unusable by the defense because the prosecution chose to know no more.

The *Brady* and *Griffin* rule rests on basic principles of fairness. If information is withheld by the prosecution and if that information, although not pursued by the prosecution, of itself would have reasonably led to the procuring of information usable in any manner in the defense of the accused, that fact of itself should make the withholding of the uncommunicated matters the basis for a new trial. We are dealing here with capital charges. The appellees were represented by court appointed counsel who, however able and conscientious, could not have the facilities of investigation available to the State. The information withheld would have made the procuring of the further, and possibly vital, information easily obtainable.

The issue before us is not the guilt or the innocence of the appellees but whether, under all the circumstances, the withholding of the information by the State constituted a violation of due process. In my judgment, it clearly did. I would affirm the order of Judge Moorman granting a new trial.



[fol. 193]

## SUPREME COURT OF THE UNITED STATES

No. 642—October Term, 1965

JAMES V. GILES, et al., Petitioners,

MARYLAND.

## ORDER ALLOWING CERTIORARI—Filed March 21, 1966

The petition herein for a writ of certiorari to the Court of Appeals of the State of Maryland is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Testimony that a witness has been confined in a mental hospital has been held admissible on the issue of credibility. *Waller v. State*, 246 Miss. 136, 123 So.2d 239 (1961); *People v. Kiker* (Cal. Dist. Ct. App. 1962) 243 P.2d 816.